

Hawking Neighborhood Justice: Unlicensed Vending in the Midtown Community Court

Linda M. Ricci[†]

The New York City Criminal Court (the Criminal Court) is the busiest criminal court in the world.¹ It operates in all five city boroughs and serves as the administrative starting point for nearly all criminal cases, including felonies, misdemeanors, and violations.² In theory, the New York Supreme Court handles felony cases, and the Criminal Court hears misdemeanors.³ In fact, however, crime levels in New York City have reached such levels that over fifty percent of all felony arrests are reduced by the prosecutor to misdemeanors so that they may be addressed in the Criminal Court.⁴ Thus, as the processing of these felony-type crimes has been accommodated in the Criminal Court, many low-level quality-of-life crimes have been bumped out of the system for lack of time, space, and resources. In Manhattan, the quality-of-life crimes comprise five general categories: prostitution, subway fare-beating, minor drug offenses, unlicensed street peddling, and petit larceny/criminal possession of stolen property.

Given the limited resources of the state and the high levels of crime in New York City, state and local law enforcement efforts are concentrated on major violent crimes, such as rape, murder, and armed robbery.⁵ But violent crimes constitute less than twenty-five percent of all crimes committed in New York City; most crimes are nonviolent.⁶ Thus, it appears to the casual observer that many quality-of-life crimes go substantially unnoticed by law enforcement officials. Although quality-of-life offenses victimize communities, they are often "played down in the welter of violent felonies."⁷ Quality-of-life offenses are the crimes that affect the city's population most; indeed, they profoundly influence citizens' sense of safety in their neighborhoods.⁸ Recently, the public

[†] A special thank you to John P. McCormick for his talented editing and comments.

1. STATE OF N.Y., DEP'T OF STATE, LOCAL GOV. HANDBOOK 38 (4th ed. 1987).

2. Harry I. Subin, *The New York City Criminal Court: The Case for Abolition* 1 (Occasional Papers, Center for Research in Crime and Justice No. XII, 1992).

3. Generally, felony arrests are transferred to the New York Supreme Court after the bail determination is made in the Criminal Court. In a number of boroughs, some felonies are retained by the Criminal Court and later disposed of in special parts. Written Comments from Michael Smith, Vera Institute of Justice, to Linda M. Ricci 1 (Nov. 15, 1993) (on file with author).

4. Subin, *supra* note 2, at 4.

5. Interview with Judge Robert G.M. Keating, Administrative Judge of the New York City Criminal Court, in New York, N.Y. (Feb. 1, 1993).

6. NEW YORK POLICE DEP'T, POLICING NEW YORK CITY IN THE 1990S 13 (1991) [hereinafter POLICING NEW YORK CITY].

7. Ralph Blumenthal, *Real-Life Courtroom Drama May Play on Broadway Stage*, N.Y. TIMES, Nov. 15, 1991, at A1.

8. POLICING NEW YORK CITY, *supra* note 6, at 13.

and the police have begun to question the seeming lack of adequate attention given to these offenses.⁹

On October 12, 1993, a new structure for the processing of quality-of-life crimes opened its doors at 314 West 54th Street.¹⁰ This structure is more than just a new or additional facility; it represents an effort for meaningful change in the state criminal justice system. The culmination of over two years' planning, the Midtown Community Court (the Community Court) is unique in the United States and has jurisdiction over quality-of-life crimes committed in the Times Square Area of Manhattan.¹¹ Approximately thirty-six percent of misdemeanor arrests in New York City occur in this area.¹² The court's innovative approach strives for swift justice and productive alternatives in sentencing. The court's goal, as defined by its founders, is "to make justice more productive and visible to the affected community by addressing quality-of-life crimes in a setting where community concerns can be heard and individualized sanctions can be developed that benefit the community, the victim, and the defendant."¹³

The Midtown Community Court is an official branch of the Criminal Court,¹⁴ yet it is not a court in the traditional sense. The Community Court houses arraignments only, and, in this respect, it substantially replaces the Criminal Court in the processing of misdemeanor arrests made in the Times Square Area. Offenders—five card Monte players, illegal peddlers, prostitutes, turnstile jumpers, purse snatchers, and other misdemeanants—are arraigned and sentenced at the Community Court.¹⁵ The Community Court represents

9. The "first task" of Mayor Rudolph Giuliani and Police Commissioner William Bratton is "to reclaim the streets" by paying more attention to "quality-of-life intrusions." *A Broad Plan for Safe Streets*, N.Y. TIMES, Dec. 7, 1993, at A26. This designation of the Mayor's task recognizes the fact that although "[m]ost serious crimes dropped" during the past few years, "people have not felt safer." *Id.*

10. Telephone Interview with John Feinblatt, Coordinator, Midtown Community Court (Dec. 1, 1993).

11. As used in this Note, the term "Times Square Area" refers to the area between 29th Street and 59th Street, from Lexington Avenue to Hudson Avenue. *Id.*

12. This figure is for the area covered by Midtown Precincts North and South. Telephone Interview with John Feinblatt, *supra* note 10; interview with Gerald Shoenfeld, Chairman of the Shubert Organization, and Herb Sturz, former Deputy Mayor for Criminal Justice, in New York, N.Y. (Feb. 11, 1993). The Midtown North and South Precincts encompass an area highly affected by quality-of-life crimes. Indicative of the area's character, the Midtown South Precinct is commonly described as "the diseased precinct of the universe." Telephone Interview with John Williams, Operations Coordinator, Midtown Community Court (Dec. 3, 1992).

13. Midtown Community Court Project, Community Court Project (Apr. 2, 1992) (on file with author) [hereinafter Community Court Project].

14. Midtown Community Court Project, The Midtown Community Court (1992) (on file with author).

15. Arrests to be processed at the Community Court are expected to fall primarily in the following categories:

subway fare-beating	33%
prostitution	19%
petit larceny & criminal possession of stolen property	16%
unlicensed vending	9%
minor drug offenses	9%

Community Court Project, *supra* note 13, at 15.

Hawking Neighborhood Justice

a dramatic break, both in philosophy and practice, from the "turnstile" justice that abounds in the New York City Criminal Court. In the Criminal Court, the processing of quality-of-life crimes has been characterized by many as routine, impersonal, and, ultimately, ineffective. As one commentator noted:

In what is a ritual that every one of the participants knows by rote, the suspect is picked up by police, booked at the local station house, taken to police headquarters downtown . . . fingerprinted there, put in a cell overnight, taken to arraignment court the next day, where the case is usually disposed of at the bench within three minutes, and then released. Time served, they call it. The court frees the suspect back to the streets without knowing any more about him or her than when the person entered the courthouse.¹⁶

In seeking to overcome these failings, the Community Court has introduced substantive and procedural changes in the present system.

This Note explores the workings of the Midtown Community Court and considers its application to unlicensed street vending. Unlicensed vending is generally, although not perfectly, representative of the quality-of-life crimes processed by the Community Court. This crime is especially amenable to study because it varies little among offenders and occurs in high volume. Although unlicensed vending is neither a violent nor dangerous crime, it presents real problems to the people and the city. Unlicensed vendors pose safety, health, and economic threats to members of the public and to private businesses. The system is still grappling with how best to handle this particular group of offenders, and relatively little academic research has been done on high-volume, low-profile misdemeanors.

To assess the Community Court's significance in the larger system, this Note uses unlicensed vending as the lens through which to observe and understand the court's innovations. Part I is investigative in nature and brings to light many relevant facts and circumstances surrounding unlicensed street vending in New York City. Part II follows a vending offender through the traditional criminal justice system from arrest to release. Part III discusses the workings of the Community Court and its design for change. Finally, Part IV illuminates some of the most important issues presented by the Community Court, with specific reference to the plight of unlicensed vendors.

I. STREET VENDING IN NEW YORK CITY

Street vendors are present in many parts of New York City. In midtown Manhattan, where the problem is particularly acute, it is nearly impossible to

16. Marcia Chambers, NAT'L L.J., July 5, 1993 (bi-weekly column), at 15.

walk a single block without observing tables of merchandise for sale on the sidewalk. The merchandise ranges from umbrellas and toys to counterfeit Gucci bags and Rolex watches. Nearly everything found in nearby stores is also for sale on the sidewalk. Some peddlers have elaborate tables piled high with a variety of items; other, more mobile entrepreneurs carry only a small suitcase of merchandise. In contrast to most stores, however, bargains may be struck, and there are no regular opening or closing hours. The vendors are here to sell as long as business is good. Consumers are tourists, regular customers, browsers, and one-time buyers alike. Even on the coldest and rainiest of days, the streets are lined with vendors.

There are four general categories of city peddlers: (1) food vendors, (2) vendors of written materials, (3) disabled veterans, and (4) general merchandise vendors. Each type of vendor is subject to a different regulatory scheme, and law enforcement officials consequently deal with them differently. Food vendors present relatively few problems for law enforcement officials, because most of them are licensed.¹⁷ Vendors of written materials hold a special status, because they cannot be prosecuted due to First Amendment considerations.¹⁸ Disabled veterans have a complicated history and recently have been the subject of special judicial and legislative attention.¹⁹ Compared with the

17. Interview with Officer Adam D'Amico, New York Police Department, Midtown Precinct South, in New York, N.Y. (Dec. 15, 1992). Among the various types of street vendors, food vendors are commonly characterized as the "good vendors." *Vendors: Good, Bad and Good-Bad*, N.Y. TIMES, Dec. 1, 1986, at A20. The Department of Health licenses and regulates food vendors, and it currently restricts the number of food vending licenses to 3000. TASK FORCE ON GEN. VENDORS, DEP'T OF CONSUMER AFFAIRS, NEW YORK, N.Y., BALANCING SAFETY AND SALES ON CITY STREETS 8 n.1 (Feb. 1991).

18. Book vendors, often referred to as "general vendors with an exemption," retain a special status among vendors because they are exempt from the licensing requirement. The selling of printed material, as the dissemination of information, is considered a constitutionally protected activity under the First Amendment, and the book vendor exemption in the New York City Administrative Code embraces this notion. NEW YORK, N.Y., ADMIN. CODE §§ 20-453, -473 (1985 & Supp. 1993). The exemption has been pushed to its limits—even calendars and baseball cards fall within the provision. Interview with William H. Daly, Director, Office of Midtown Enforcement, in New York, N.Y. (Dec. 15, 1992). The curbside book business is quite profitable, with individual vendor book sales producing gross revenues of \$250 to \$300 per day. Interview with Lt. J.J. Johnson, Commanding Officer, PBMS Peddler Task Force, in New York, N.Y. (Nov. 17, 1992). However, this business has been described as an organized hierarchy of vendors, *id.*, for many of these vendors are employees themselves, keeping only \$40 of the day's profits. Richard Levine, *On the Sidewalks, Business is Booming*, N.Y. TIMES, Sept. 24, 1990, at B1; see *Disabled Vets Gone, But Peddlers Abound*, N.Y. TIMES, June 4, 1992, at A22. Vendors of written materials pose relatively few problems for law enforcement officials, and these vendors are usually cited only for technical violations concerning length, width, and height of selling tables.

19. Disabled veterans are licensed outside of the regular scheme, and, unlike other general vendors, they pay no annual fee and are not subject to the 853-general-vendor cap. Telephone Interview with Henry Valley, Department of Consumer Affairs (Mar. 22, 1993). At present there are several hundred licenses issued to disabled veterans, bringing the total number of issued general-vendor licenses to approximately 1200. Levine, *supra* note 18; see *Mixed Reviews on 5th Ave. to Veterans' Peddling Curb*, N.Y. TIMES, July 4, 1991, at B3.

During the past decade, the plight of disabled veterans in the peddling industry has stirred an ongoing and heated debate. Until July 1991, a state law enacted in 1894 granted special peddling privileges to disabled veterans by allowing them to sell any goods without restriction in any area and regardless of municipal rules. As a result of abuse of this law through "rent-a-vet" schemes, see Therese Fitzgerald, *Life on the Grand Boulevard*, REAL EST. WKLY., June 19, 1991, at B2, the New York State Legislature

Hawking Neighborhood Justice

others, unlicensed general vendors, the fourth group, present grave problems of enforcement. The remainder of this Note will focus on these general merchandise vendors.²⁰

Although there are 853 licensed general merchandise vendors in the city,²¹ only a few of those selling on the streets of New York City are licensed.²² Vendor licenses in New York are much sought after, as evidenced by the waiting list of 1100 persons who have license applications pending with the Department of Consumer Affairs.²³ The number of people who are granted new licenses varies from year to year, depending upon how many vendors fail to renew their licenses.²⁴ The wait for a new license can be as long as five years.²⁵

Because current enforcement operations have little "bite," incentives to obtain a license and to function legally are few.²⁶ Even some licensed vendors violate restrictions on the areas where they are permitted to operate. For example, all vendors are prohibited from peddling anything but food and printed materials in many of the streets in midtown and downtown Manhattan.²⁷ Many vendors do not heed the restrictions, however, as these are the areas with the highest volume of pedestrian traffic, making them very lucrative. In order to draw vendors out of the most congested areas of the city,

amended the law in September 1991 to exempt New York City. *Topics of the Times; Reclaiming Fifth Avenue*, N.Y. TIMES, July 7, 1991, at D10. The original statute had applied to the entire state. *Mixed Reviews on 5th Ave. to Veterans' Peddling Curb*, *supra*. In fact, only a short time before the state legislature passed the amendment, the Appellate Division of the New York Supreme Court upheld the statute in *Kaswan v. Aponte*, 553 N.Y.S.2d 407 (App. Div. 1990), reasoning that state law took precedence over city regulations. Disabled veterans are now subject to the same regulations restricting the time and place of vending activity as are other general vendors.

20. Perhaps surprisingly, the general merchandise vendor category includes vendors of religious items and art vendors. Nonetheless, although vendors of religious items have no special protection under the laws of New York, "it has been the policy [of the New York Police Department] to address religious peddler conditions with warnings" as a result of "the volatile nature of enforcement." NEW YORK POLICE DEP'T, PEDDLER HANDBOOK (n.d.) (on file with author). In contrast, art vendors are subject to the same level of enforcement as other general merchandise vendors. *Id.*

21. Levine, *supra* note 18. This figure does not include disabled veterans, who are licensed under a separate scheme. See *supra* note 19 and accompanying text.

22. Interview with Tom Cusick, President, Fifth Avenue Association, in New York, N.Y. (Dec. 15, 1992).

23. Telephone Interview with Henry Valley, *supra* note 19. In September 1990, the Consumer Affairs Department had a waiting list of 710 names that had been frozen since 1988. Levine, *supra* note 18. By 1991, the waiting list had grown to over 1000 names. TASK FORCE ON GEN. VENDORS, *supra* note 17, at 10.

24. This number can vary from as few as 50 to as many as 200. Telephone Interview with Henry Valley, *supra* note 19.

25. Int. No. 601, New York City Council § 1 (1992) (on file with author).

26. This situation is similar to that of taxicabs. A medallion is the taxi driver's equivalent of a peddler's vending license. In order to retain a medallion, a medallion taxi driver must follow the rules. An inevitable consequence of this regulated competition has been the appearance of unregulated gypsy cabs. Licensed and unlicensed vendors may be analogous to licensed and unlicensed taxicabs in this respect—for each there exists a limited number of licenses and a significant unregulated, competitive market.

27. NEW YORK, N.Y., ADMIN. CODE tit. 20, ch. 2, subch. 27, Reg. 11 Relating to Streets Restricted to General Vendors and Food Vendors.

incentives and disincentives must trump the vendors' natural inclination to sell in the locations frequented by the most people.

Anecdotal evidence indicates that over the past decade, the number of street vendors throughout the city has increased dramatically. The precise number of unlicensed general vendors is unknown, although most would agree that unlicensed vendors greatly outnumber the 853 legal vendors in the city. Most estimates of the number of illegal peddlers range from 10,000 to 16,500.²⁸ A conservative estimate is that fewer than forty percent of vendors are licensed.²⁹ The Peddler Task Force's Commanding Officer estimates that in Manhattan there are three hundred illegal watch peddlers alone.³⁰ The recent explosion in the number of illegal vendors has been attributed primarily to economic forces and changes in the city's demographics.³¹ High rents have pushed some businesses out of stores and onto the sidewalks, and people are eager to find bargains among the miles of curbside merchandise. Furthermore, the constant influx of immigrants into New York City has been a continuing source of new street vendors.³² While growth in other industries has declined, street vending has flourished. In fact, "[p]eddling may be one of New York City's few remaining growth industries."³³

Though at first glance it may seem a petty offense, unlicensed vending is highly visible and presents real problems to the residents and pedestrians of a congested and fast-paced city. Tom Cusick, President of the Fifth Avenue Association, has expressed serious concerns about the increase in the number of street vendors: "These vendors clog our streets . . . misrepresent the quality of their merchandise, operate in the underground economy, leave their trash on the sidewalks, fail to pay many of their taxes and attract other undesirable activities into our neighborhood."³⁴ Moreover, at times the vendors can be confrontational, with "men get[ting] into fist fights over the best sidewalk

28. Louis Meixler, *New York Cornering Peddlers*, CHIC. TRIB., May 16, 1993, at 8; Deborah Sontag, *Unlicensed Peddlers, Unfettered Dreams*, N.Y. TIMES, June 14, 1993, at A1; interview with Tom Cusick, *supra* note 22.

29. Interview with William H. Daly, *supra* note 18.

30. Interview with Lt. J.J. Johnson, *supra* note 18.

31. Levine, *supra* note 18.

32. Sontag, *supra* note 28. Many officials within the city's criminal justice system and other commentators have observed that a significant number of the city's peddlers are Senegalese natives. See, e.g., James Brooke, *Senegal Hails Vendor Home From 5th Ave.*, N.Y. TIMES, Jan. 2, 1987, at A3; *Street Peddlers From Senegal Flock to New York*, N.Y. TIMES, Nov. 10, 1985, at A51; *Working the Street*, ECONOMIST, Oct. 27, 1984, at 73; interview with Lt. J.J. Johnson, *supra* note 18. The Senegalese began to appear in significant numbers in 1983. *Street Peddlers From Senegal Flock to New York*, *supra*. Many of them do not speak English. Interview with Nina Epstein, Attorney-in-Charge, The Legal Aid Society, in New York, N.Y. (Dec. 14, 1992). And, unlike other vending groups, such as disabled veterans, the Senegalese do not have strong political influence in the city. This has raised concerns that they have no one to protect them from alleged instances of unfair targeting by the police. *Id.*

33. Levine, *supra* note 18.

34. TASK FORCE ON GEN. VENDORS, *supra* note 17, at 8 (quoting Tom Cusick, President of the Fifth Avenue Association, who testified before a New York State Senate Committee chaired by Sen. Roy Goodman (R-Manhattan) on Dec. 19, 1990).

Hawking Neighborhood Justice

selling locations.”³⁵ Thus, when vendors become too numerous in one area, they may pose safety problems and inconvenience passers-by.

Most of the wares sold by vendors are not stolen goods. In fact, only between fifteen and twenty percent of the merchandise sold on the street is “hot.”³⁶ Like other merchants, these sellers have wholesale suppliers.³⁷ Nonetheless, misrepresentations regarding the source or content of a product are not uncommon. In 1988, the New York City Department of Consumer Affairs purchased random samples of merchandise from vendors to assess their quality. Examples of fraud included a five-dollar pair of hoop earrings labeled fourteen-karat gold that contained no gold and a five-dollar scarf labeled cashmere that was really polyester.³⁸ Interestingly, consumers may not be disappointed by the misrepresentations inherent in some counterfeit products. For example, most consumers would not believe that a “real Gucci” bag can be bought for fifteen dollars and therefore would not expect “Gucci” quality from such a purchase. Nevertheless, this situation could be exceptional; consumers will not always have sufficient knowledge regarding a product’s authenticity to make an informed decision as to whether to sacrifice quality for a lower price.

Vendors selling counterfeit goods present special problems to consumers. Many counterfeit products sold by vendors do not meet safety standards. For example, counterfeit dolls may contain hazardous substances,³⁹ unapproved toys may have sharp edges, and counterfeit fragrances may include unsafe chemical compositions.⁴⁰ In addition, many vendors sell products that are approved for sale in other countries and meet a lower standard of quality than their counterparts approved for sale in the United States. Vendors obtain these products on the “gray market” and are able to sell them at a lower price than similar products in nearby stores.⁴¹ Moreover, because street vendors do not generally cultivate regular customers, they may sell lower-quality products to unknowing consumers.⁴² *Caveat emptor* prevails, for unlicensed vendors often change their location, and consumers of faulty products are usually without

35. Peter Knobler, *Hell on Upper Broadway*, N.Y. TIMES, Aug. 9, 1991, at A27.

36. Interview with Tom Cusick, *supra* note 22.

37. *Working the Street*, *supra* note 32.

38. James Barron, *Street Vending Booths Open With the Leaves*, N.Y. TIMES, Mar. 18, 1990, at 44.

39. Joseph Berger, *Fake Cabbage Patch Dolls are Seized*, N.Y. TIMES, Dec. 15, 1984, at 28. In one Manhattan raid, Customs Service agents seized 20,000 counterfeit dolls that were believed to contain toxic materials and reportedly were being sold by street peddlers. *Id.*; see also Sari Horwitz, *CPSC, FBI Probing Cabbage Patch Caper; Fake Dolls Eyed for Fire, Health Hazards*, WASH. POST, Dec. 12, 1984, at D11.

40. Interview with Lt. J.J. Johnson, *supra* note 18.

41. Products bought on the “gray market” generally have commonly known trademarks because the producers often license, contract, or franchise foreign manufacturers to make the same products. These goods enter the United States through unauthorized channels. They are intended only for foreign sale, yet it is not illegal to sell them in the United States. Bob Weinstein, *Street Vendors Lack the Right Stuff*, NEWSDAY, June 21, 1989, at 51. Products sold on the gray market include batteries, film, cameras, cosmetics, clothing, and jewelry. Isadore Barmash, *Retailers Say Ruling Will Tend to Stabilize Prices*, N.Y. TIMES, June 1, 1988, at D6.

42. Interview with Lt. J.J. Johnson, *supra* note 18.

recourse.⁴³

Vendors are also of primary concern to the city's businesses. The vendors' presence creates an economic battle for customers and for control of valuable urban space. Unlicensed peddlers deprive city businesses of millions of dollars in sales, avoid sales tax, and destroy the ambiance of posh areas such as Fifth Avenue. The New York Department of Finance estimates the City's loss in sales taxes to be \$25 million annually.⁴⁴ Unlicensed street vendors also share in the advantages enjoyed by licensed vendors in that they pay no rent and have no advertising or utility costs. Unlicensed street peddlers selling counterfeit goods are considered the most troublesome by merchants and manufacturers as well as by the police.⁴⁵ They increase costs for name-brand companies and the legitimate vendors and merchandisers who sell the authentic brand products.⁴⁶

The area served by the Community Court is of particular importance to the city due to the tourist revenue that it generates. In the first seven months of 1991, arrests for unlicensed vending comprised nine percent of all non-felony arrests in Midtown Precincts North and South, and the Tenth Precinct.⁴⁷ Many city residents have cried out against the vendors, claiming that "[t]heir appearance, the quality of their products, the litter, and the overcrowding of the sidewalks all contribute to a degrading" of the city's "visual impact."⁴⁸ Ultimately, confronting the problem of unlicensed vending necessari-

43. Weinstein, *supra* note 41.

44. Sontag, *supra* note 28. Estimates of unpaid sales taxes have ranged from \$15 million, *Working the Street*, *supra* note 32, to \$300 million. Ronald Sullivan, *Crackdown on Vendors in the Streets*, N.Y. TIMES, Apr. 13, 1993, at B1. The savings to individual peddlers may be quite significant. For example, in October 1993, one street peddler was indicted for failing to report \$180,000 in income that was earned over three years from the sale of umbrellas, handbags, and gloves. *Peddler Indicted for Tax Evasion*, N.Y. TIMES, Oct. 28, 1993, at B4.

45. Sontag, *supra* note 28.

46. For example, legitimate merchandisers are hurt by the streetside sale of counterfeit umbrellas labeled "Totes." Because authentic Totes-brand umbrellas are guaranteed for life, Totes Consumer Affairs, Toll-Free Recorded Message (Feb. 22, 1994), some consumers go to stores selling genuine Totes umbrellas for free replacements when their "Totes"-labeled umbrellas break. Unknowing employees may replace the defective umbrellas.

47. Midtown Community Court Project, Annual Non-Felony Arrests in MTS, MTN, & the 10th Precincts (compiling data produced by New York Police Department) (on file with author) [hereinafter Annual Non-Felony Arrests]. These three precincts will comprise the jurisdictional "catchment area" of the Community Court. Although the court has initially begun processing arraignments only for arrests made in Midtown Precincts North and South, it is expected that the Tenth Precinct will later be added to its jurisdiction.

48. Edward Munves, Jr., James Robinson Inc., Manhattan, *Readers Join Brady Crusade to Take City Sidewalks Back from Vendors*, CRAIN'S N.Y. BUS., Sept. 22, 1986, at 10. The unwanted presence of street vendors has been noted by residents across the city. One East Village resident lamented:

The hive of ragtag street peddlers infesting my neighborhood is more than a noisy and noisome eyesore. . . . The police occasionally make half-hearted attempts to scatter the peddlers, but they simply return once the officers have moved on. . . . The areas overrun by them are beginning to resemble Calcutta, to the detriment of local retailers, restaurants and other businesses, not to mention the residents who daily must wade through the blight.

George Zarycky, *Without Food Vendors, Midtown Becomes Barren Mooncape; Astor Place Bazaar*, N.Y. TIMES, July 26, 1988 (letter to editor), at A20.

Hawking Neighborhood Justice

ly involves a fragile balance of competing interests. Arguably, “[t]he most contentious issue in New York City is probably not capital punishment or abortion but street vendors.”⁴⁹

Unlicensed vending is the only means of support for most street vendors.⁵⁰ Because of the vendors’ work ethic, some New Yorkers may be said to have “an amused respect for pedlars [sic]. They see them as embodying the true spirit of American capitalism.”⁵¹ “[I]f you disallow peddling,” according to one New Yorker, “then you disallow the American Way.”⁵² Vendors may even be “doing something constructive” in “functioning as a bazaar” and providing consumers with lower prices, convenience, and greater diversity of products.⁵³ This activity is not traditionally considered to be *malum in se*,⁵⁴ and many people believe that unlicensed vendors are somehow different from garden-variety criminals because vendors perform a community service of sorts.

Although many New Yorkers remain ambivalent toward vendors, neighborhoods throughout the city have tried various methods to clear their streets of the threatening, unsafe conditions created by peddlers. One neighborhood group on the Upper West Side planned a demonstration in order to inform other neighborhood residents of their plan to “literally clean up [their] own neighborhood” with the support of representatives of the Police and Sanitation Departments.⁵⁵ However, during the early morning hours of the day of the planned demonstration, “four men went on their own cleanup campaign” and destroyed the peddlers’ boxes, tables, chairs, and “scavenged refuse that was being sold each day.”⁵⁶ According to one resident’s account of the incident, the broken remains were picked up later that morning by the Sanitation Department, and the street remained clear both for the demonstration later that afternoon and for the next few weeks. This resident expressed a frustration and desperation common to many neighborhoods: “Is this what it takes to clean up our neighborhoods? Has New York turned into such a war zone that each block needs a militia to maintain social order?”⁵⁷ As exemplified by this neighborhood’s experience, some residents have become so frustrated by the vendors that they have resorted to violence. Despite other, more civilized attempts by neighborhood residents, police, and city officials to limit street vending, the problem continues.

49. *Vendors: Good, Bad and Good-Bad*, *supra* note 17.

50. Interview with Judge Robert G.M. Keating, *supra* note 5.

51. *Working the Street*, *supra* note 32.

52. Interview with Jeanelle Farris, Times Square Business Improvement District, in New York, N.Y. (Dec. 15, 1992).

53. Barron, *supra* note 38.

54. Interview with Judge Robert G.M. Keating, *supra* note 5.

55. Knobler, *supra* note 35.

56. *Id.*

57. *Id.*

II. STEP-BY-STEP PROCESSING OF UNLICENSED VENDING MISDEMEANANTS

A. *Applicable Law and its Enforcement*

General merchandise vending is regulated by the New York City Administrative Code and, more recently, by the New York Penal Law Code.⁵⁸ The Administrative Code contains numerous restraints on vendors' manner of sale, including: restrictions on the placement of vending carts; prohibitions against vending in certain areas; and guidelines limiting the height, width, and length of vending tables.⁵⁹ The Department of Consumer Affairs has the authority under the Administrative Code to hold public hearings considering petitions to restrict general vendors from selling on designated streets.⁶⁰ The commissioner must determine whether the presence of vendors constitutes "a serious and immediate threat to the health, safety and well-being of the public" because the street has become too congested by pedestrian or vehicular traffic to permit such vending.⁶¹ The resultant list of street, day, and hour restrictions throughout the city comprises over twenty pages. Licensed vendors who sell on restricted streets are given a notice of violation and a summons to appear before the Environmental Control Board (ECB).⁶²

The Code provides that any vendor operating without a license "shall be guilty of a misdemeanor punishable by a fine of not . . . more than one thousand dollars, or by imprisonment for not more than three months or by both such fine and imprisonment."⁶³ The Code also allows a police officer to seize a vendor's vehicle and goods if the vendor cannot produce evidence of a license or is peddling on a restricted street; these items may be subject to forfeiture upon notice and judicial determination.⁶⁴ The Department of Consumer Affairs and the Police Department share jurisdiction over enforcement.⁶⁵ The Department of Consumer Affairs has an independent inspection unit that assists the Police Department in making arrests.⁶⁶

58. Although the penal law does not address street peddlers specifically, it prohibits the manufacture, distribution, and sale of counterfeit goods. The selling of counterfeit goods valued over \$1000 is a felony. N.Y. PENAL LAW §§ 165.72-.73, 70.00 (1994). Thus, in contrast to the noncriminal, unclassified misdemeanor status of violations of the New York City Administrative Code, the penal law imposes a relatively high penalty on the peddling of counterfeit goods.

59. NEW YORK, N.Y., ADMIN. CODE § 20-465 (1985 & Supp. 1993). For example, it is illegal to vend without a table, with a table over five feet high, or fewer than 20 feet from an entranceway to any building. *Id.*

60. *Id.*

61. *Id.* § 20-465(1)(1).

62. Interview with William H. Daly, *supra* note 18.

63. NEW YORK, N.Y., ADMIN. CODE § 20-472(a) (1985 & Supp. 1993).

64. *Id.* §§ 20-468, -469.

65. TASK FORCE ON GEN. VENDORS, *supra* note 17, at 12.

66. *Id.*

Hawking Neighborhood Justice

Also on the enforcement side, the Peddler Task Force is the city's most concentrated effort to reduce the number of unlicensed vendors. Task Force officers are assigned to police precincts⁶⁷ and provide them with expertise specific to the peddler problem. In 1990, the Task Force was comprised of twenty-five police officers and five supervisors, and covered Manhattan from Battery Park to 59th Street.⁶⁸ By 1991, the unit had grown to sixty officers. Illegal vendors generally come to the attention of the police in one of two ways: Either officers notice them while they are on patrol, or community residents and merchants complain to the police.⁶⁹ The police pay extra attention to more congested areas of the city,⁷⁰ and they often recognize violators because most unlicensed vendors are repeat offenders.⁷¹ Although recent statistics are not available, during the first nine months of the fiscal year ending June 30, 1983, summonses were issued to 25,728 general vendors, 19,513 of whom were unlicensed.⁷² General vendors' default rates in paying fines were startling. Only seven percent of these vendors actually paid.⁷³

As a response to the perception that many vendors view monetary fines as merely a "cost of doing business," the Peddler Task Force has periodically intensified its efforts to make arrests and confiscate vendors' goods. In 1989, the Task Force made 3411 arrests and 5174 confiscations.⁷⁴ Notwithstanding these efforts, this type of aggressive and increased enforcement is ineffective as a large-scale, long-term solution. Although such an approach may deter some peddlers, it also drains the system's resources. Arrests require many hours of police officers' time, and the procedure by which confiscated goods are marked and stored has been characterized as unnecessarily wasteful.⁷⁵

Another major player in the enforcement of criminal penalties against unlicensed vendors is the Fifth Avenue Association. Founded in 1907, the Fifth Avenue Association is the "ears and voice" of businesspeople and merchants on and around Fifth Avenue.⁷⁶ The Association addresses a wide variety of problems, but only in the last two years has illegal vending become a major issue for this group of merchants.⁷⁷ Because street vending is more concen-

67. The vendor units in Midtown Precincts North and South each have approximately six officers assigned to them. Interview with Adam D'Amico, *supra* note 17.

68. Levine, *supra* note 18.

69. *Id.*

70. The Empire State Building region, 34th Street, and 57th Street are some of these areas. Interview with Lt. J.J. Johnson, *supra* note 18.

71. *Id.*

72. William G. Blair, *Sidewalk Goods of Discounters Seized in Raids*, N.Y. TIMES, April 14, 1983, at B1.

73. *Id.*

74. Levine, *supra* note 18.

75. See Sontag, *supra* note 28.

76. Fitzgerald, *supra* note 19.

77. Interview with Tom Cusick, *supra* note 22.

trated in the Times Square Area than in any other,⁷⁸ the Association has lobbied for much of the law dealing with unlicensed vending.⁷⁹ Not only has the Association participated in precedent-setting litigation,⁸⁰ but it has also been a significant force in the formulation of legislation dealing with unlicensed vendors. The Fifth Avenue Association has been, and likely will continue to be, closely involved in efforts to rid the city of unlicensed vendors.

B. New York's Criminal Justice System

Unlicensed vending cases and other misdemeanors are processed at the New York City Criminal Court. The Criminal Court in Manhattan, located at 100 Centre Street, disposes of cases very rapidly. In terms of the number of cases handled, at least one judge regards the Criminal Court as "better than any other urban court."⁸¹ Given the startling volume of cases that the court must process every year, it must move cases quickly to keep the system operational. The Criminal Court sees between 250,000 and 300,000 cases per year, including both summonses and arrests. Of these, approximately 55,000 of the more serious cases are diverted to the New York Supreme Court.⁸² On average, then, each of the approximately eighty-five Criminal Court judges⁸³ must deal with 3500 cases per year.⁸⁴ In 1990, the Criminal Court disposed of approximately 213,000 cases.⁸⁵ Among these were 65,000 of the 114,000 cases that began as felony arrests, 142,000 misdemeanor arrests, and 7000 violations.⁸⁶ In the words of Judge Robert Keating, however, the inevitable consequence is that "we don't do much with the cases we dispose of."⁸⁷ Hence, given the cost of operating the Criminal Court, this is a very expensive system for simply dismissing cases.⁸⁸ One critic noted, "so long as we continue to make the Court responsible for dealing with all of the conduct which society has declared to be offensive. . . . [A]ll that can be hoped for is a better

78. Interview with Hamilton Robinson, Chief of Security, Times Square Business Improvement District, in New York, N.Y. (Dec. 15, 1992).

79. The Fifth Avenue Association represents merchants in the area of Fifth Avenue from Washington Square Park to 96th Street, east of Sixth Avenue and west of Lexington Avenue. Fitzgerald, *supra* note 19. Its interest in the development of the Midtown Community Court is explained by the Association's geographical overlap with the court's jurisdictional "catchment area." See *supra* note 11 and accompanying text; *infra* note 177 and accompanying text.

80. See, e.g., *supra* note 19.

81. Interview with Judge Robert G.M. Keating, *supra* note 5.

82. *Id.* An alternative to arrest, a summons is a written order notifying an individual that he has been charged with an offense. The summons directs the person to appear in court at a later date to answer the charge.

83. Subin, *supra* note 2, at 1.

84. Interview with Judge Robert G.M. Keating, *supra* note 5.

85. Subin, *supra* note 2, at 1.

86. *Id.*

87. Interview with Judge Robert G.M. Keating, *supra* note 5.

88. *Id.*

Hawking Neighborhood Justice

working dispositional machine.”⁸⁹ Nevertheless, to some officials within the system, rapid disposition, even absent a significant substantive penalty, is a measure of success in itself.

The enormity of the New York City criminal justice operation and the magnitude of its task are best understood in terms of the resources allocated to the entities involved. The budgets of the primary offices are approximately \$65 million, \$500 million, and \$1.6 billion for the Criminal Court, the District Attorney’s Office, and the New York Police Department, respectively.⁹⁰ Due to the sheer number of cases, however, judges, prosecutors, and defense attorneys often limit themselves to “a largely clerical role.”⁹¹ Of the 213,000 cases disposed of by the Criminal Court in 1990, only 0.4% went to trial. All other cases entering the Criminal Court were dismissed or disposed of through plea bargains.⁹²

C. Processing of the Offender

The arrest-to-arraignment process used in New York City is more complicated than that in most cities.⁹³ Upon observing a street vendor selling goods, a police officer asks to see the vendor’s license. If the vendor is unlicensed, the officer may then arrest him.⁹⁴ However, given the low visibility and low priority of this crime, police discretion often determines whether a particular unlicensed vending case will enter the criminal justice system at all. If the officer proceeds with an arrest, the vendor is brought to the station house of the local precinct where he is checked for identification.⁹⁵ At the precinct, a Desk Appearance Ticket (DAT) determination is made, usually within three

89. Subin, *supra* note 2, at 12. Many commentators are critical of the New York City criminal justice system. Aric Press has noted that “criminal justice in New York is a system in name only.” Aric Press, *Piecing Together New York’s Criminal Justice System: The Response to Crack*, 43 REC. ASS’N BAR CITY N.Y. 541, 542 (1988). Press further explained: “The picture . . . that emerges from an examination of the city system under stress is that it’s a bit like Samuel Johnson’s dog: the wonder is that it walks at all.” *Id.* at 543-44.

90. Interview with Judge Robert G.M. Keating, *supra* note 5. The cost of operating the criminal justice system is difficult to measure. In one study based on 1977 figures, the cost of the Criminal Court’s operations was over \$150 million. Subin, *supra* note 2, at 1. The cost of the Criminal Court judiciary is \$60,000, and the cost of prosecutors and defense attorneys operating in the court is approximately \$50 million. *Id.* In 1987, the budget of the New York Police Department was \$1.326 billion. Raymond D. Horton, *How Best to Use 5,000 More Police; the Finest Can Be Even Finer*, N.Y. TIMES, Sept. 22, 1990, at 23. The overall budget for the criminal defense operations of the Legal Aid Society is \$60 million. Daniel Wise, *City Seeks \$4.8 Million Cut from Legal Aid’s Budget*, N.Y. L.J., Apr. 10, 1991, at 1. The budget of the Manhattan District Attorney’s Office alone is \$54 million. *Id.*

91. Subin, *supra* note 2, at 4.

92. *Id.*

93. POLICING NEW YORK CITY, *supra* note 6, at 54.

94. Because the majority of street vendors are men, the masculine pronoun is used to refer to them throughout this Note.

95. In addition, the police may seize a vendor’s pushcart, stand, or goods, pursuant to NEW YORK, N.Y., ADMIN. CODE § 20-468(e) (1985 & Supp. 1993).

hours.⁹⁶ An offender is given a DAT only if three conditions exist: He has verifiable identification, he is not charged with a felony, and he has no outstanding warrants. The issuance of a DAT is essentially station-house release (i.e. a summons issued by the desk officer), and the offender is expected to return to court of his own volition on the date provided for arraignment.⁹⁷ The court date is generally three weeks from the day of arrest.⁹⁸

Unlicensed vending offenders are issued DATs more often than any other non-felony offenders. In a recent period, eighty-one percent of unlicensed vending arrestees in Midtown Precincts North and South and the Tenth Precinct were issued DATs.⁹⁹ The remainder either had no verifiable identification or had outstanding warrants. An average of only fifty-one percent of all misdemeanor arrestees—those arrested for unlicensed vending, fare-beating, petit larceny, drugs, prostitution, and assault—were issued DATs during this period.¹⁰⁰

If the arrested individual does not have identification, or if there is an outstanding warrant for his arrest, he is transferred to central booking.¹⁰¹ At central booking, a staff member of the Criminal Justice Agency interviews each defendant to complete an "interview report" for use in determining bail or release conditions at arraignment. At present, this form is one page long and requires information with respect to the offender's family, residence,

96. Interview with John Williams, Operations Coordinator, Midtown Community Court, in New York, N.Y. (Feb. 1, 1993).

97. Interview with Deirdre Newton, Assistant District Attorney, in New York, N.Y. (Dec. 14, 1992).

Although DATs are routinely given out, the street name for these tickets—"disappearance tickets"—is a more accurate description. In fact, an average of 45% of those served with DATs do not appear on their assigned court date. Jan Hoffman, *A User-Friendly Experiment in Justice*, N.Y. TIMES, Oct. 1, 1993, at B1. The number of arrestees who do not show up for arraignment is astounding—of the 64,153 DATs New York issued last year, 29,510 individuals did not appear. Ron Scherer, *New York Gives Criminals 'Disappearance Tickets'*, CHRISTIAN SCI. MONITOR, Nov. 15, 1993, at 1. When an individual does not appear, a bench warrant is issued for the person's arrest. However, in most cases the City does not actively seek to enforce the warrant and instead waits for the person to be arrested again. In addition, many individuals have more than one DAT. *Id.*

DATs recently have come under fire from Paul Shechtman, former Counsel to the Manhattan District Attorney. *Id.* DATs were originally conceived to relieve the heavy burden on the courts given the large number of misdemeanor arrests in the city. Rather than the usual two nights' detention prior to arraignment, release pending a future court date is issued. Unfortunately, DATs are "widely ignored" by arrestees, and the problem has grown to the point that the District Attorney's Office has compiled a list of 3000 recidivists. *Id.* These repeat offenders, known as "the stealth bombers of the criminal justice system since they fly below the scope of the felony court," are no longer eligible to receive DATs. Instead, they are held until arraignment. *Id.* (quoting Jeremy Travis, Deputy Commissioner for Legal Matters, New York Police Dep't).

98. Interview with Officer Adam D'Amico, *supra* note 17.

99. Annual Non-Felony Arrests, *supra* note 47.

100. *Id.*

101. *Id.* Only men are taken to central booking; women go directly to court. Interview with John Williams, *supra* note 96.

Approximately 300 people await arraignment daily in Manhattan, yet the holding cells at 100 Centre Street can hold only 180 detainees. Therefore, when the 100 Centre Street cells are full, the overflow detainees are held in police precinct lockups. Elliott Pinsley & Sam Adler, *More Holding Pens Sought for 100 Centre Basement*, MANHATTAN LAW., May 1990, at 6.

Hawking Neighborhood Justice

employment, and criminal record. The court uses the information gathered during this interview at arraignment to determine whether the offender has sufficient ties to the community to be released on his own recognizance. If he cannot, the court sets the amount of bail.¹⁰² After the paperwork has been completed at central booking, the vendor is held until arraignment. This arrest-to-arraignment period cannot normally exceed twenty-four hours.¹⁰³ The average period is between twelve and twenty-four hours.¹⁰⁴ For vendors the time from arrest to arraignment is usually relatively short because there is no "rap sheet" that must be reviewed.

D. Processing of Attendant Paperwork

The movement of an offender's attendant paperwork is separate from the movement of the offender himself, and the processing of paperwork can be a significant burden on the arresting officer. In general, after arrest the officer meets with an assistant district attorney (ADA) at the District Attorney's Office to review the case and waits while the ADA writes the complaint.¹⁰⁵ The police officer must then approve and sign the complaint.¹⁰⁶ A common complaint among officers is that they spend too much time waiting at the District Attorney's Office after an arrest. One officer remarked that "peddlers are beating me out of court—I'm still doing paperwork."¹⁰⁷ A police officer's responsibilities following arrest may consume hours of regular time and overtime.

The expedited affidavit process (EAP), designed specifically for unlicensed vending cases, helps to alleviate some of the burden on arresting officers by reducing the amount of time between arrest and arraignment. In order to take advantage of this program, the officer must have observed the following activity prior to arrest: (1) suspect offering merchandise for sale, and/or (2) suspect making verbal statements advertising merchandise for sale, and/or (3) suspect making a sale.¹⁰⁸ The program permits the arresting officer to sign a written affidavit that is transmitted to the District Attorney's Office, thus allowing the ADA to draft complaints without requiring the arresting officer's

102. *Id.*

103. *People ex rel. Maxian ex rel. Roundtree v. Brown*, 570 N.E.2d 223, 225 (1991) (noting, however, that presumption against prearrest detention exceeding 24 hours can be rebutted by an acceptable explanation). The 24-hour rule is based on N.Y. CRIM. PROC. LAW § 140.20(1) (McKinney 1992).

104. Interview with Peter Kougasian, Assistant District Attorney, in New York, N.Y. (Nov. 17, 1992).

105. *POLICING NEW YORK CITY*, *supra* note 6, at 54.

106. Interview with Maxwell Wiley, Assistant District Attorney, in New York, N.Y. (Dec. 14, 1992).

107. Interview with Officer Kevin Burns, Community Affairs, New York Police Department, in New York, N.Y. (Nov. 17, 1992).

108. New York Police Dep't, Operations Order: Program to Effectively Expedite ECAB Cases of Unlicensed General Vending in Patrol Precincts Within the Patrol Boroughs Manhattan South and Manhattan North (No. 80) 1 (June 15, 1992) (on file with author).

physical presence.¹⁰⁹ If the case qualifies for EAP treatment and the officer chooses to use the standardized form affidavit, the information is sent by facsimile to the District Attorney's Office. The necessary information is then sent to data processing so that the actual complaint can be drafted.

More recently, some precincts have instituted the DAT Express program, an offshoot of the EAP, as another time-saving device.¹¹⁰ For certain categories of misdemeanors, the program obviates the need for police officers to go to the District Attorney's Office for the complaint to be drawn; rather, the arresting police officer uses a computerized form to transmit the relevant information.¹¹¹ This reduces the number of hours required to process the case, because the officers do not have to spend time waiting for ADAs. Where the program is being used, the offender is taken directly to the precinct after arrest and a determination is made as to his release.¹¹²

E. Arraignment and Disposition

Legal Aid Society attorneys frequently represent unlicensed vendors at arraignment.¹¹³ In addition, many vendors belong to informal associations that pool their money to provide their own representation.¹¹⁴ At arraignment, the District Attorney's Office nearly always offers unlicensed vending arrestees a violation and either a fine or community service in exchange for a guilty plea.¹¹⁵ Under the New York Penal Code, this violation is disorderly conduct, the lowest possible charge. Although disorderly conduct technically is not a crime, it will become part of the individual's rap sheet. In addition, the ADA will generally ask for a delay of one year in sealing the record.¹¹⁶ ADAs have the authority to accept a plea to less than the record charge, and they have the discretion to condition the acceptance on a specific sentence.¹¹⁷

ADAs have legal control over the charge only; the judge has legal control over sentencing. Nonetheless, the ability of the District Attorney's Office to make offers of disorderly conduct has given it much more control over its caseload.¹¹⁸ Because unlicensed vending is on the low end of the "sliding scale of crime," the District Attorney's Office cannot afford to prosecute all of these cases if the defendant does not accept a plea bargain.¹¹⁹ If an offer

109. *Id.*

110. Interview with Officer Adam D'Amico, *supra* note 17.

111. Interview with Deirdre Newton, *supra* note 97.

112. *Id.*

113. Interview with Nina Epstein, *supra* note 32.

114. Interview with Deirdre Newton, *supra* note 97.

115. Interview with Maxwell Wiley, *supra* note 106.

116. *Id.*

117. *Id.*

118. Interview with Deirdre Newton, *supra* note 97.

119. Interview with Peter Kougasian, *supra* note 104.

Hawking Neighborhood Justice

is too harsh, a defendant will plead not guilty. By pleading not guilty, unlicensed vendors have the potential to wreak havoc on the system by going to trial. Thus, if a vending offender pleads not guilty, two dispositions are most likely: Either the case is dismissed for lack of prosecution or the defendant "warrants out"—he does not show up for his next court date and a bench warrant is issued for his arrest.¹²⁰

Not surprisingly, the great majority of unlicensed vending cases are disposed of by plea at arraignment in the Criminal Court.¹²¹ In fact, during the period between January and June of 1991, eighty-six percent of all unlicensed vending cases in Manhattan were disposed of at arraignment; an average of sixty-one percent of all misdemeanors were disposed of at arraignment during that time period.¹²² The disposition of unlicensed vending cases is not unlike other dispositions generally in the Criminal Court. This is a system in which 43% of the cases in the Criminal Court are ultimately dismissed, 30% of convicted defendants receive no time in jail, and 17% of those convicted serve fewer than twenty days in jail.¹²³

The sanctioning of unlicensed vending cases is quite routine, for judges have little room at the margins to be either more stern or more creative. The Manhattan District Attorney's Office recorded the following outcomes of disposed unlicensed vending cases during the first four months of 1991:¹²⁴ 3% of those arrested were sentenced to jail time, 34% were fined, 13% were sentenced to time served, 41% were given a conditional discharge, 6% were given an adjournment and contemplation of dismissal (ACD), and 3% had their cases dismissed outright.¹²⁵ Relatively few vending offenders are given time served because most receive DATs which do not entail time served at all. Furthermore, until recently, community service was not available as an option for judges in sentencing offenders at the Criminal Court. However, since the institution of the Community Services Office in Criminal Court, ADAs nearly always offer vendors a violation plus either a fine or community service.¹²⁶ The community service programs presently offered at the Criminal Court include work with the Parks Department, the Transit Authority, the Depart-

120. *Id.*

121. Letter from Michael J. Magnani, Law Clerk to Administrative Judge, New York City Criminal Court, to Linda M. Ricci (Feb. 24, 1993) (on file with author).

122. Midtown Community Court Project, Dispositions: All of Manhattan (1991) (compiling data produced by Office of Court Administration) (on file with author).

123. Subin, *supra* note 2, at 18.

124. This time period was before the institution of community service sanctions at the Criminal Court.

125. Midtown Community Court Project, Manhattan District Attorney Outcomes of Disposed Cases (1991) (compiling data produced by the District Attorney's Office) (based on figures from MTS, MTN, 10th, and 17th precincts) (on file with author). The fines issued to offenders may be only \$50, an amount the vendors likely consider a mere cost of doing business. Interview with Lt. J.J. Johnson, *supra* note 18.

A defendant sentenced to "time served" receives credit for the time he has served in custody in jail between his arrest and the imposition of sentence, and he is not given any additional custodial sentence.

126. Interview with Maxwell Wiley, *supra* note 106.

ment of Human Resources, the Mayor's Office, and the Department of Corrections.¹²⁷ Last year 9000 people participated in the community service programs mandated by the Criminal Court.¹²⁸ When the establishment of the Community Court was initially contemplated, the Criminal Court system offered few sentencing alternatives: Until four years ago, the Criminal Court had no community service or drug treatment programs; until three years ago, it had no AIDS education.¹²⁹ The Community Court's appeal lay in its promise for unique sanctioning alternatives. During the period of the Community Court's development, however, many of these alternatives have become a regular part of the Criminal Court system, making the Community Court's offerings appear less and less novel.¹³⁰

Unlicensed vending is an unclassified misdemeanor and consequently no fingerprints are taken for record purposes.¹³¹ As a result, from the court's perspective, every arrest is "the first" arrest for this group of offenders.¹³² Thus, although the recidivism rate for this category of offenders is very high, prior arrests for unlicensed vending have virtually no consequence in the sentencing of a repeat offender.

In the final analysis, unlicensed vending often is treated as no more than a nuisance by the courts. In fact, the procedures for dealing with peddling crimes have been streamlined to such an extent that they are often not prosecuted at all.¹³³ The following story is indicative of the gravity, or lack thereof, with which many judges treat unlicensed vending arrests. In December 1989, street vendor William Thigpen was arrested twice in the same week for peddling lighted yo-yos without a permit. The first time, Criminal Court Judge John Stackhouse dismissed the charge. The second time, the Judge dismissed the case after having the following conversation with the arrestee [partial transcript]:

ADA:	Your Honor, you might remember you dismissed Mr. Thigpen on Monday or Tuesday.
Court:	It is true.
Defendant:	I had a few left.
Court:	Any with lights on them?
Defendant:	Yes.
Court:	What did you sell those for?

127. Interview with Judge Charles Solomon, Supervising Judge of the New York County Criminal Court, in New York, N.Y. (Feb. 1, 1993).

128. Interview with Paul Shechtman, former Counsel to the Manhattan District Attorney, District Attorney's Office, in New York, N.Y. (Feb. 8, 1993).

129. *Id.*

130. *Id.*

131. This means that those arrested are not given a New York State Identification (NYSID) number.

132. Interview with Officer Adam D'Amico, *supra* note 17.

133. Interview with Peter Kougasian, *supra* note 104.

Hawking Neighborhood Justice

Defendant: Two dollars.
Court: That's a reasonable price.
Defense Counsel: You need for your children?
Court: I do. I don't think it is appropriate for me to buy them. In the spirit of the holiday, I am dismissing it.
ADA: Your Honor, People vigorously take exception.¹³⁴

According to ADA Peter Kougasian, during this second arraignment, the ADAs questioned the judge: "Didn't he promise not to do it again? Didn't you promise?"¹³⁵ During his first arraignment, William Thigpen had promised to stop selling. "[I]n an object lesson intended more for the judge than for the defendant," then-ADA Paul Shechtman appealed the case for the Manhattan District Attorney's Office.¹³⁶ One inevitably must ask why this seemingly trivial case was even brought. Kougasian explains that "police get huge amounts of overtime for silly arrests."¹³⁷

On May 31, 1990, a three-judge panel of the Appellate Term, First Department, handed down a decision that agreed with Shechtman. The judges stated that Judge Stackhouse's ground for dismissal, "the spirit of the holiday," was inappropriate.¹³⁸ Thigpen's lawyer commented: "We're talking about selling yo-yos on the street. This is just plain silly."¹³⁹ And so the story ended, but the legacy of street vendor William Thigpen has remained as "a symbol of urban lawlessness for selling yo-yos without a license at Christmastime."¹⁴⁰

Although William Thigpen's peddling charges were twice dismissed, he in fact "did time" solely as a result of his arrests.¹⁴¹ Thigpen spent two days in a police precinct lockup while awaiting arraignment, for there was not enough holding space at 100 Centre Street.¹⁴² Although the amount of time between a suspect's arrest and arraignment has been reduced during the last few years, this was a significant problem until recently.¹⁴³

The relatively short and insignificant career of William Thigpen teaches many important lessons about the criminal justice system in New York City.

134. Elliott Pinsley, *D.A. Raps Judge for Springing Yo-Yo Vendor*, MANHATTAN LAW., Apr. 1990 (Partial Transcript), at 5.

135. Interview with Peter Kougasian, *supra* note 104.

136. Pinsley, *supra* note 134.

137. Interview with Peter Kougasian, *supra* note 104.

138. Elliott Pinsley, *Yo-Yo- Man II: Back to You, Judge*, MANHATTAN LAW., July-Aug. 1990, at 9.

139. *Id.*

140. Pinsley, *supra* note 134.

141. Pinsley & Adler, *supra* note 101.

142. *Id.*

143. In May 1990, the average wait between arrest and arraignment was between 35 and 50 hours. *Id.* One-third to one-half of this waiting period was due to the difficulties in locating a suspect and bringing him to court from the police lockup. *Id.* Since the decision by the New York Court of Appeals in *Roundtree*, a detainment of more than 24 hours may be challenged by the arrestee. *People ex rel. Maxian ex rel. Roundtree v. Brown*, 570 N.E.2d 223, 225 (1991). Further detention must be supported by a satisfactory explanation of the delay. *See supra* note 103.

First, it underscores the relative lack of seriousness with which some system participants view unlicensed vending. Second, it demonstrates that even if on principle such a vendor should be prosecuted and sentenced, the lack of adequate resources precludes a judge from imposing any real sanction. Third, the lack of space for the defendant in the 100 Centre Street holding cells speaks to the inadequacy of a system that was designed to accommodate many fewer crimes and criminals. And finally, the fact that William Thigpen spent two days in a police precinct lock-up reinforces the notion that the process is the punishment for this type of case.

In fact, the pretrial process itself is often the only punishment.¹⁴⁴ The notion that "the process is the punishment" is contrary to the belief that defendants are presumed innocent until proven guilty. The procedural punishment for unlicensed vending in New York City includes detention until disposition as well as forfeiture of one's goods. The police have a great deal of discretion in making arrests, and their decisions significantly affect the charges brought and the potential for eventual release of the suspect. Pretrial costs in the Criminal Court appear high relative to the actual penalties meted out. Yet, despite the shortcomings of the pretrial criminal system, the need for recognized formalities persists. Even the most remote possibility of incarceration for defendants appearing in court argues for a formal, adversarial process.¹⁴⁵

III. DESIGN FOR CHANGE: THE MIDTOWN COMMUNITY COURT

A. *Community Policing*

The development of the Community Court is a natural extension of the community policing efforts commenced in early 1991. The driving force behind this "radical" change in direction¹⁴⁶ is the desire to transform the New York City Police Department into a neighborhood-based organization such that "every neighborhood will have one or more police officers assigned to it and responsible for helping the residents of the community prevent crime, develop a capability for order maintenance and improve the quality of life."¹⁴⁷ The philosophy of the reform is based upon the notion that the relationship between the community and the police must be a partnership.¹⁴⁸

144. See MALCOLM M. FEELEY, *THE PROCESS IS THE PUNISHMENT* 201 (1992).

145. *Id.* at 242.

146. Interview with Jeremy Travis, Deputy Commissioner for Legal Matters, New York Police Department, in New York, N.Y. (Nov. 17, 1992). For a discussion of the community policing philosophy and its application in solving the problems of particular precincts, see NEW YORK POLICE DEP'T, *CIVIL ENFORCEMENT INITIATIVE* (1992).

147. *POLICING NEW YORK CITY*, *supra* note 6, at i.

148. Interview with Jeremy Travis, *supra* note 146.

Hawking Neighborhood Justice

This partnership has three objectives: (1) identification and definition of problems, (2) creation of strategies to overcome the problems, and (3) evaluation of their success.¹⁴⁹ Without input from the community, the police tend to wait for something serious to happen;¹⁵⁰ consequently, most resources are allocated to the most serious and violent crimes. But many communities care about low-level crimes, and the definition of these problems can be instrumental to a satisfactory policing system.

Decentralization is a primary goal of community policing.¹⁵¹ The Police Department has stated that for the community policing program to be successful, it must shift its focus to the neighborhood.¹⁵² The Police Department is organized around seventy-five precincts, which are loosely correlated around the city's ethnic neighborhoods.¹⁵³ Under the community policing initiative, the police officer communicates directly with the city's residents in order to identify the major problems of individual neighborhoods. Thus, a seemingly minor problem, such as the presence of street vendors, will be addressed if it is identified by community residents. Before the formal introduction of community participation in this process, the police tended to devote more time and resources to major crimes, without realizing that other significant community problems were being virtually ignored.¹⁵⁴ The Community Court seeks flexibility and innovation consistent with the notion of community policing.

In general, the police are received positively by the community. Community policing is designed to capitalize on that fact. In contrast, the courts are generally viewed in a negative light. The Criminal Court is inaccessible to the community, and, as a result, the court's connection with the community is attenuated at best. Because offenders currently are processed downtown at 100 Centre Street, they are usually physically located some distance away from the neighborhood where they were arrested. As a result, rarely is someone from the defendant's community or family present when the offender is being arraigned. The development of the Community Court is an attempt to remedy this feeling of isolation and distance between the system of justice and the community in order to increase the community's involvement in what is being done and how it is being accomplished.¹⁵⁵ In this way, the Community Court

149. *Id.*

150. *Id.*

151. POLICING NEW YORK CITY, *supra* note 6, at 12.

152. *Id.* at 34.

153. *Id.* at 11.

154. Interview with Jeremy Travis, *supra* note 146.

155. The "downtown" Criminal Court and Rikers Island jail perpetuate the feeling of isolation by removing the processing of these crimes from the city's communities, for "[t]he very functioning of a system is inhibited by its physical isolation." Richard Danzig, *Towards the Creation of a Complementary, Decentralized System of Criminal Justice*, in NEIGHBORHOOD JUSTICE: ASSESSMENT OF AN EMERGING IDEA 4 (Roman Tomasic & Malcolm M. Feeley eds., 1982). Overcoming the "out of sight, out of mind" syndrome would be a significant first step, because "[e]ven if no benefits were realized from having the criminal justice system under community control, putting parts of that system in communities would have

is a natural adjunct to community policing.

B. History, Structure, and Design of the Community Court

The Community Court is an attempt to move the lower court closer to a crime-ridden neighborhood so that it might be in a position to give lesser crimes more attention.¹⁵⁶ The project has thrived on notions of risk, change, and innovation. The developers of the Community Court have sought to meet the challenge of one critic of the present system "to think radically enough about solutions to the [Criminal] Court's problems."¹⁵⁷ Although the Community Court has developed in a direction probably not envisioned by this critic, its developers appear to have internalized his mantra of radical change.

As the result of a private/public partnership, the Community Court has a unique slate of supporters and critics and an interesting history. The court was conceived by Gerald Shoenfeld, Chairman of the Shubert Organization, the world's largest theater organization. Shoenfeld's interest in a community court might, at first glance, seem odd, but his interest is quickly explained by his desire for "the reclamation of Times Square."¹⁵⁸ Shoenfeld's organization had witnessed Times Square's decline into a haven for concentrated pornography that increasingly threatened the theater as an institution and this part of New York City in general. Forty-second Street was taking on a "wasteland quality." As he observed, "bad uses attract bad uses and good uses attract good uses."¹⁵⁹ The image of the city and of the "Crossroads of the World" was being tarnished by the undesirable behavior that overwhelmed the area. Many activities in the area, including unlicensed vending, were incompatible with the reclamation of Times Square. In fact, in Shoenfeld's words, "vending became condoned by Mayor Koch who called it 'the American way.'"¹⁶⁰ The Shubert Organization's goal was to create a climate conducive to the redevelopment of Times Square. Thus explained, Shoenfeld's interest in the development of a community court is clear: As an institution, the theater makes an important economic contribution to the city, and the existence of the theater was threatened by the quality-of-life crimes in the Times Square area. The idea for a community court was part of a larger effort by the Shubert Organization;¹⁶¹ ultimately, the Mayor's Midtown Citizens' Committee met with twenty-seven

significant advantages." *Id.*

156. *Spotlight on Justice in Times Square*, N.Y. TIMES, NOV. 17, 1991, § 4, at 16. For readings on the neighborhood justice movement, decentralization, the role of the community, and alternatives to courts, see generally NEIGHBORHOOD JUSTICE, *supra* note 155.

157. Subin, *supra* 2, at 18.

158. Interview with Gerald Shoenfeld and Herb Sturz, *supra* note 12.

159. *Id.*

160. *Id.*

161. Among other efforts to reclaim the Times Square Area, the Shubert Organization sponsored the locating of the convention center and the Marriott Hotel in the Times Square vicinity. *Id.*

Hawking Neighborhood Justice

judges of the Criminal Court to consider the idea.¹⁶²

The Community Court is a three-year experiment and sits at 314 West 54th Street. The refurbishment of the building in preparation for the court cost the city approximately \$500,000;¹⁶³ the City will pay \$1.6 million for the project.¹⁶⁴ The majority of the court's remaining costs are funded by private initiative. Shoenfeld has raised \$2.2 million over three years to fund the court.¹⁶⁵ In addition, he received \$110,000 up front to fund the project until it was approved by the Mayor's Office.¹⁶⁶ Some of the largest donations to the project are in-kind; many groups are donating staff to assist in the Community Court.¹⁶⁷

As one approaches 314 West 54th Street, a white and green striped flag boldly announces the existence of the Community Court. In contrast to the heavy gray decor of the Criminal Court downtown, this court sports a white, clean newness.¹⁶⁸ Just inside the front door, a television screen displays the docket for the day, including each defendant's name, the most serious charge, the defendant's attorney, and the status of the case. Similar screens are found throughout the inside of the small courtroom, which has only five rows for visitors. The Community Court is gradually integrating the latest technologies into the judicial process; computers sit on every desk and table inside the courtroom for the judge, the prosecutor, the defense counsel, and others who help to coordinate the court's activities.¹⁶⁹ Translators sit in the front row, attentively waiting to assist when they are needed.¹⁷⁰

Only one judge presides at the Community Court, but this position rotates

162. *Id.*

163. *Id.*

164. *Id.*

165. The following monetary grants, among others, are included in the privately sponsored contributions to the Community Court:

\$600,000	Times Square Business Improvement District
\$300,000	New York Telephone
\$300,000	New York Times Company Foundation
\$300,000	Shubert Foundation
\$200,000	Rockefeller Foundation Trust
\$75,000	League of American Theaters
\$30,000	Capital Cities/ABC

Id.

166. *Id.*

167. Interview with John Williams, *supra* note 96.

168. The Community Court has been described as "something of a criminal justice super mall," complete with carpeting, computers, bowls of fruit, hot soup, coffee, and paintings on the walls. Jan Hoffman, *A Manhattan Court Explores Service-Oriented Sentencing*, N.Y. TIMES, Nov. 27, 1993, at A1.

169. The court will use such technologies as handwriting-reading, document-storing scanning systems, and statewide data networks. In combination with the court's computer system, these systems will gather the various types of information and merge it with existing court records to assist judges, prosecutors, defense attorneys, and court staff in the decisionmaking process. Bob Temliak, *Real Estate Update*, N.Y. L.J., Nov. 3, 1993, at 5.

170. One translator, who speaks both Wolof and French, frequently assists the many Senegalese vendors arraigned for unlicensed vending. Interview with Unidentified Translator at Midtown Community Court, in New York, N.Y. (Dec. 17, 1993).

among three Criminal Court judges.¹⁷¹ The court's jurisdiction is limited to misdemeanor arrests made in two of the city's twenty-one police precincts, Midtown Precincts North and South.¹⁷² In fact, the Community Court is juxtaposed to the Midtown North police station. This area is affected by all of the quality-of-life problems that the court is trying to solve. Unlicensed vending is no exception. Street vendors depend upon the tourist industry, and the vendors are concentrated geographically in this area precisely because of the concentration of tourists. They most often work at peak tourist times, making a high volume of sales shortly before and after nearby theater performances.

The developers of the court envision an improved system of justice in five respects.¹⁷³ First, the Community Court seeks to design sentences that are both swift and certain. In this way, the developers of the court hope to reinforce the message that "crime has consequences."¹⁷⁴ Second, the Community Court aims to make justice more visible. The developers of the court believe that the court will be accessible to the public, particularly through a Community Advisory Board. In addition, the work of sentenced offenders performing community service projects will be visible since they are carried out in the midtown area—"[d]ispensing justice locally will communicate to both the lawless and the law-abiding that order prevails and crime will be punished."¹⁷⁵ Third, the Community Court is expected to encourage police enforcement of low-level offenses. By providing constructive sentences for conviction of these low-level offenses, the Community Court may encourage greater enforcement efforts. Fourth, the court will integrate local residents and businesses into the planning and development of solutions to quality-of-life problems in the Times Square Area. Finally,

[t]he court will understand that communities are victims too. In a centralized court low-level crimes tend to be seen as isolated incidents rather than as ongoing quality-of-life conditions. By understanding the magnitude, scope, and nature of quality-of-life crimes in midtown, the Community Court will be able to address the neighborhood's problems.¹⁷⁶

The Community Court has jurisdiction over quality-of-life offenses committed in the Times Square area of Manhattan (the Community Court's "catchment area"), and it strives to provide immediate disposition of the five categories

171. Interview with Judge Charles Solomon, *supra* note 127. All of the Community Court's presiding judges are administrative judges holding supervisory positions. Interview with John Feinblatt, Coordinator, Midtown Community Court, in New York, N.Y. (Dec. 17, 1993).

172. Hoffman, *supra* note 97; see *supra* notes 11-12 and accompanying text.

173. Midtown Community Court Project, *supra* note 14.

174. *Id.*

175. *Id.*

176. *Id.*

Hawking Neighborhood Justice

of misdemeanor crimes assigned to it from its catchment area.¹⁷⁷ Offenders who plead not guilty at the Community Court are sent to the Criminal Court for trial, while felony offenders continue to be processed downtown.¹⁷⁸ The Community Court is open from 10 a.m. to 5 p.m., Monday through Friday, and the court generally sees between fifty-five and sixty cases per day, including summary arrests and DATs.¹⁷⁹ The court handles all DATs issued in the catchment area as well as misdemeanor summary arrests made during the hours between noon and 4 a.m., from Sunday through Thursday.¹⁸⁰ It should be noted, however, that the court has remained flexible so that if it is determined that some misdemeanors are not appropriate for processing at the court or that the hours need to be adjusted, the court will accommodate these changes.¹⁸¹

At arrest, offenders are taken directly to a precinct rather than to central booking. At the precinct, a complaint is drawn and fingerprints are checked. All offenders are then taken to Midtown Precinct North (MTN) which adjoins the Community Court. Equipped with holding facilities, MTN has taken on a new function as a substitute for central booking. It is expected that an average of twenty-nine defendants will be held at MTN at any given time as they wait for their paperwork to arrive.¹⁸² At MTN, Criminal Justice Agency (CJA) staff members interview defendants in order to complete the newly devised prearrest assessment form, which is an expanded version of the present release-on-recognizance (ROR) intake form used by CJA at central booking.¹⁸³ This new and more detailed assessment instrument focuses on gathering responses from arrestees regarding substance abuse, homelessness,

177. After eight weeks of operation, the court's catchment area continues to include only Midtown Precincts North and South. As the court and its procedures become more established, however, the Community Court expects to arraign offenders brought in from the 10th and Port Authority Police Precincts as well. Interview with John Williams, *supra* note 96.

178. Up to 40% of the cases arraigned at the Community Court may be continued at the Criminal Court as the result of not guilty pleas. Hoffman, *supra* note 97.

179. Interview with Judge Charles Solomon, *supra* note 127. Under a "summary arrest" procedure, the alternative to issuance of a DAT, the defendant is held rather than released for a later court appearance.

180. Community Court Project, *supra* note 13, at 14. Approximately 50% of Community Court defendants are expected to be DAT recipients. *Id.* Arrests made between noon and 4 a.m. constitute approximately 72% of daily summary arrests. Misdemeanants arrested at other times are arraigned at the Criminal Court. In addition, because of the Community Court's limited hours, arrests made during the "crime-heavy weekends" are sent to the Criminal Court to insure that defendants are arraigned within 24 hours after arrest. Hoffman, *supra* note 168; *see supra* note 103 and accompanying text.

181. Interview with John Feinblatt, Coordinator, Midtown Community Court, in New York, N.Y. (Feb. 1, 1993).

182. On Thursdays and Fridays, the busiest days, there will be approximately 35 prisoners. Community Court Project, *supra* note 13, at 2.

183. Interview with John Williams, *supra* note 96. ROR is a form of pretrial release based on the arrested person's own promise that he will appear in court at a later date. ROR is used in lieu of a bail bond when the judge is satisfied that the defendant will appear without the need for security.

The expanded intake form is completed by the defendant on a laptop computer by touching a pencil-like instrument to the computer's screen. The information is transferred to the main system, and the judge, prosecutor, and defense attorney are given copies. Interview with John Feinblatt, *supra* note 171; demonstration by CJA Representative at Midtown Community Court, in New York, N.Y. (Dec. 17, 1993).

health, and qualifications for community service. DAT recipients are interviewed at the court on the date of arraignment.¹⁸⁴

The Community Court is attempting to quicken the movement of paperwork at the court by putting all initial arrest information on computers in the precincts. In this way, when a defendant is moved to MTN, his paperwork will be sent by computer link.¹⁸⁵ The Community Court is also considering an expansion of the list of expedited affidavit process (EAP) eligible cases in order to simplify the transmission of information during arrest procedures.¹⁸⁶ In addition, the Community Court is contemplating a computer link to the court so that a complaint can be sent directly from the precinct to the court via computer network. Traditional methods eventually will be replaced by a fully integrated system of computers for transporting the rap sheet and the complaint.¹⁸⁷ Although the Community Court has not eliminated paperwork entirely, it is expected to move gradually to a computer-centered system.

C. Sentencing

The essence of the Community Court is that it gives judges an alternative to jailing or simply releasing quality-of-life offenders. The court's premise is that the current system lacks appropriately fashioned sanctions, since judges are forced to dispose of the majority of cases without any jail time.¹⁸⁸ This is a reflection of the inadequate resources available—in 1990, only 4000 jail spaces were available for 119,000 convicted misdemeanants.¹⁸⁹ While the judge, prosecutor, and defense attorney retain their traditional roles, the Community Court's staff has made new resources available to them. Although the new sentencing options are not mandatory and there are no sentencing guidelines, Judge Charles Solomon believes that the Community Court judges will be assertive in using those options available to them.¹⁹⁰ He explains that most judges would rather give a defendant a meaningful sentence, if it is available, than dismiss the case entirely for lack of space in the city's jails.¹⁹¹ In fact, the great majority of offenders at the Community Court do receive one of the alternative sentences, with only approximately eight percent of the Community Court offenders being sentenced to jail time.¹⁹²

Sanctions at the Community Court fall into four categories: (1) community

184. Community Court Project, *supra* note 13, at 2.

185. Interview with John Williams, *supra* note 96.

186. See *supra* text accompanying notes 108-09.

187. Interview with John Williams, *supra* note 96.

188. Interview with Judge Robert G.M. Keating, *supra* note 5.

189. Subin, *supra* note 2, at 12.

190. Interview with Judge Charles Solomon, *supra* note 127.

191. *Id.*

192. Telephone Interview with John Feinblatt, Coordinator, Midtown Community Court (Apr. 11, 1994).

Hawking Neighborhood Justice

service, (2) short-term social service intervention, (3) long-term treatment, and (4) victim/offender reconciliation.¹⁹³ Most often, an offender receives a combination of sanctions, such as community service and treatment. Whenever possible, sanctions are imposed and performed immediately after the disposition of the case, in order to reduce the risk that a defendant will fail to fulfill his sentence. Furthermore, a resource coordinating team is on hand to match defendants with appropriate spaces in community service, drug treatment, and other social services. The Community Court has worked to provide health services to defendants; two rooms and three staff members are dedicated to this task and provide voluntary testing for tuberculosis, H.I.V., and sexually transmitted diseases.¹⁹⁴ The Community Court strives to provide services and impose sanctions that meet the needs of the community and individuals arraigned at the court. The court hopes to develop graduated sanctions so that defendants who are rearrested or fail to comply with their community service requirement can receive a more severe punishment without necessarily going to jail.¹⁹⁵

It is important to consider the character and nature of street vendors in evaluating sentencing alternatives. As long as unlicensed vending remains a crime, the criminal justice system must strive to accommodate this segment of offenders. Relative to other convicted criminals, street vendors in New York City occupy a unique space in the criminal justice system. They are relatively harmless, and their crime is nonviolent economic activity. Consequently, there appears to be something of a mismatch between these offenders and the treatment and sanctions that the Community Court has designed for the more common misdemeanants. The framework of Community Court sanctions is ambitious in that it accommodates a large array of crimes and criminals, yet it does not address the specific needs of the vendors. While further study is needed to determine the differences between vendors and others arraigned at the Community Court, and whether there are other, heretofore unconsidered sanctioning alternatives that may provide a better fit for the vendors, it is sufficient to note that the nature of the vendors' crime may call for penalties with more focused economic consequences. The Community Court's sentences are based upon the premise that alternatives to jail time are needed given the city's limited resources. The court's approach primarily stresses the criminal

193. Community Court Project, *supra* note 13, at 4.

194. Hoffman, *supra* note 168.

195. Community Court Project, *supra* note 13, at 4. The Community Court's alternative sentencing scheme does not obviate jail sentences entirely. If a defendant is given an opportunity to participate in social service treatment or to perform community service and he does not complete it and is later brought before the court again, the judge can impose a jail sentence. In one case, for example, a Community Court defendant was sentenced to drug treatment. He dropped out of the treatment, however, after one day. The same defendant was rearrested for shoplifting and again arraigned in the Community Court. This time, the judge sentenced him to jail. Matthew Goldstein, *Encouraging First Month for Midtown Court*, N.Y. L.J., Nov. 12, 1993, at 1.

law goals of deterrence and retribution, although rehabilitation was another motivation for the creation of the court. The virtual absence of prison sentences effectively sets aside the goal of incapacitation. The court's rehabilitative-type sanctions, which include long- and short-term treatment, are not directly applicable to the vendors as a general rule. Therefore, it seems that if the court were to focus exclusively on the vendors, community service and other sanctions would be devised with specific deterrent and retributive effects for economic crimes.

The Community Court's primary innovation is to impose sanctions that include both social service and community service components. Eighty-two percent of defendants who plead guilty receive a sanction of community service, social service, or some combination of the two.¹⁹⁶ Although the court's coordinator acknowledges that the social services aspect is less relevant to the vendors than to other offenders brought to the court, he maintains that the community service component of the court's offerings is apposite to the vendors.¹⁹⁷

The court has attempted to meet the needs of individuals in the provision of resources and the design of community service projects. In light of the fact that a significant number of vendors are Senegalese, the court has sought to meet their special needs by making available English as a Second Language (ESL) classes.¹⁹⁸ Although these classes may be attended by any defendant who desires to learn English, many vendors are expected to participate. In addition, the court has sought to insure the vendors' understanding of the arraignment proceedings by having available on site a translator who speaks Wolof. And finally, the court's recognition of the presence of many Senegalese vendors has resulted in the hiring of a Senegalese supervisor for community service projects.

The following four categories of penalties are administered by the Community Court in sanctioning vendors as well as all other misdemeanants generally.

1. *Community Service*

Less than three decades ago municipal court judges in Alameda County, California, began to use community service sentences as punishment.¹⁹⁹ Since that time, community service gradually has become more popular with judges, and "with increasing frequency, judges are fashioning community service sentences on their own, without having specially organized programs in their

196. Interview with John Feinblatt, *supra* note 171.

197. Telephone Interview with John Feinblatt, *supra* note 10.

198. Participation in ESL classes may be voluntary or court-mandated. *Id.*

199. DOUGLAS CORRY McDONALD, PUNISHMENT WITHOUT WALLS 7 (1986).

Hawking Neighborhood Justice

localities.”²⁰⁰ The Community Court has joined the trend toward using community service as a distinct penal sanction; community service is the gravamen of the Community Court. No longer are judges required to rely on their own devices to see that community service is carried out. Rather, the court has created an organized, comprehensive framework through which offenders routinely are sentenced to a variety of community service projects.²⁰¹

The notion of community service as an alternative punishment is consistent with the community policing idea, as offenders are compelled to give back to the community from which they have taken. Low-level offenders, such as those arraigned at the Community Court, create a unique opportunity in sentencing. These defendants can be productive without posing a significant threat to the community. Offenders sentenced at the Community Court are assigned to perform their service for the same neighborhoods in which they committed their crime. In addition, those sanctioned with community service wear uniforms that identify them as wards of the court while they perform their duties, thus making them visible to neighborhood residents.²⁰²

There are at least three advantages to community service as compared with other sentencing schemes.²⁰³ First, community service engages offenders who can do something productive for the community, allowing the city to save the money that it would otherwise use to incarcerate them. Second, community service embraces the notion of restorative justice, because offenders are forced to see the consequences of their actions for the community and to pay the community back. Finally, community service, through its visibility, may increase community satisfaction. Increased community satisfaction is a result of the feeling among community members that the government is responsive to their concerns about crime and disorder.

A principal mission of the Community Court is to increase sentencing options that do not require use of the state’s limited jail space. Community service sentences are available to most misdemeanants at the Community Court, and they can accommodate varying degrees of supervision and skill. This flexibility allows the court to tailor a sentence to an individual, increasing the likelihood that the community service will actually be completed. A particular defendant’s suitability for a certain type of community service is

200. *Id.* at 10.

201. Memorandum from John Feinblatt, Coordinator, Midtown Community Court, to Jerry McElroy, Preliminary Discussion of Assessments at the Community Court 1 (Mar. 11, 1992) (on file with author).

202. Interview with Jeanelle Farris, *supra* note 52. Community service crews wear blue mesh vests with a yellow-green Community logo. Hoffman, *supra* note 168.

203. One shortcoming of community service is that it does not directly seek to remedy the intractability of the behavior. Arguably, the ultimate goal of the criminal justice process should be to curb this behavior altogether. Most of the offenders arraigned at the Community Court are repeat offenders, yet community service sanctions may not change behavioral patterns. One convicted prostitute at the Community Court exclaimed: “‘Making whores work? I got 49 convictions! You think stuffing envelopes for a few days is going to stop me?’” This sentiment is not atypical. Hoffman, *supra* note 168.

determined by his responses to the expanded prearrest assessment form. The factors considered include: crime type, prior record, prior warrant history, skills, mental health, physical health, DAT or summary arrest status, and previous cooperation with community service sanctions.

The community service sanctions are divided into roughly three levels of supervision. Defendants who need minimal supervision are assigned to off-site community service jobs with small nonprofit and grassroots organizations. For defendants requiring a greater degree of supervision, there are closely supervised projects off-site that are managed by trained staff. These projects include repairing or cleaning a subway station under the supervision of the Transit Authority,²⁰⁴ participating in Feeding the Homeless supervised by the Holy Apostles' Soup Kitchen, and sorting redeemable cans supervised by WE CAN.²⁰⁵ For defendants needing the highest degree of supervision, the final category of community service sanctions consists of closely supervised, on-site projects that are performed within the confines of the courthouse itself. These sanctions are reserved for offenders who are considered unlikely to complete a project. Projects range from bulk mailing for "Operation Mailbox," a service for not-for-profit organizations, to cleaning the courthouse building.²⁰⁶ A court representative/CASES staff member is available at the court to coordinate the various community service sanctions and to implement them as soon as possible after sentencing.

The Community Court disposes of approximately seventy-five percent of its daily caseload through the acceptance of guilty pleas; not guilty pleas comprise approximately twenty-five percent of pleas, both at the Community Court and downtown.²⁰⁷ With an average of fifty-eight cases a day, the court strives to make available community service opportunities for each of the approximately forty-one offenders to be sanctioned. In fact, seventy-one percent of offenders receive community service as a sanction.²⁰⁸ Because the court has been open for only a short time, the exact composition and schedule of community services is still being molded to fit the court's needs. The court's developers have determined that if each defendant who pleads guilty were to be sanctioned to community service, the court would need a daily capacity of seventy-six "slots" to accommodate all offenders. The daily allocation of the slots is expected to be the following: sixteen slots for prostitutes and the homeless, who will generally be given one day sentences; ten slots for one offender per day who would be eligible for CASES' seventy-hour Community Service Sentencing Project; and fifty slots to accommodate community service

204. Memorandum from John Feinblatt to Jerry McElroy, *supra* note 201, at 1.

205. Midtown Community Court Project, Chart A: Community Service (1992) (on file with author).

206. Interview with John Feinblatt, *supra* note 181.

207. *Id.*

208. *Id.*

Hawking Neighborhood Justice

sanctions in the remaining twenty-five cases that would average two days each.²⁰⁹

The court's community service programs have had an admirable success rate. Only approximately twenty percent of the offenders mandated to perform community service at the Community Court do not show up for their work; this is in stark contrast to the sixty percent of offenders who do not appear downtown.²¹⁰ In addition, nearly all offenders sanctioned to do community service by the Community Court complete their sentence by fulfilling all work requirements. This high rate of completion may be attributed to the careful consideration of an individual offender's needs and the array of community service projects with different degrees of supervision. An additional explanation lies in the immediacy of the sanction; the court places all defendants within twenty-four hours of their arraignment.²¹¹ Not only can offenders complete a full day of community service on the day of their arraignment, but they can also work on the weekends to fulfill their community service requirement.²¹²

Vendors are typically sentenced to between one and four days of community service by the Community Court.²¹³ A typical vendor's sentence includes work on Ninth Avenue cleaning the street and painting fire hydrants, lamp posts, and security fronts.²¹⁴ Early indicators demonstrate that community service is well-suited to most vendors. In fact, the Community Court's Coordinator, John Feinblatt, has observed that the vendors are especially responsible as a group, resulting in a high success rate for their participation in community service projects. This finding is critical to the court's success: Strict enforcement, measured by attendance and performance, is essential to critics' acceptance of the community service sentence. Preliminary figures indicate that vendors have about a ninety-three percent completion rate for community service—the highest completion rate of any group at the court.²¹⁵

209. Community Court Project, *supra* note 13, at 4.

210. Interview with John Feinblatt, *supra* note 171; see Goldstein, *supra* note 195.

211. Goldstein, *supra* note 195.

212. If the judge is aware that a defendant sentenced to community service has a job during the week, she may advise the defendant that he can perform his community service on the weekend. Moreover, if the defendant has already lost a day of work on the day of his arraignment, he can do one day of his community service on that day.

213. Telephone Interview with John Feinblatt, *supra* note 10.

214. *Id.*

215. Other community service completion rates for the court's first seven weeks of operation are the following: 70% for petty larceny, 73% for prostitution, and 80% for theft of services. *Id.*

2. Short-Term Social Service Interventions

Short-term, on-site treatment services have been developed for defendants not sentenced to serve any time in jail.²¹⁶ At arraignment, the judge has a copy of the extended release-on-recognizance intake form that the defendant has completed. If appropriate, the judge may suggest or require that the defendant take advantage of available services that include health services, drug treatment, job referrals, and housing assistance.²¹⁷ In fact, the Community Court houses twenty-six social service organizations that provide services to offenders at the court.²¹⁸ Short-term social service interventions focus on small groups, and each group is comprised of a particular category of defendants. Groups receiving such targeted services include drug users and addicts, prostitutes, and the homeless.²¹⁹

3. Long-Term Treatment

Defendants sentenced to serve time in jail may be ordered to attend drug or alcohol treatment programs.²²⁰ Long-term treatment programs include: (1) a residential program of at least ninety days for offenders who have failed in outpatient programs but have not been in a residential facility; (2) an outpatient program of between sixty and ninety days; (3) an acupuncture program for substance abusing offenders for a minimum of thirty days; and (4) a program designed for offenders at high risk of contracting tuberculosis

216. Memorandum from John Feinblatt to Jerry McElroy, *supra* note 201, at 2.

217. The need for social services by the offenders arraigned at the Community Court is readily apparent. A 1990 study by the National Institute of Justice reported that over 70% of the offenders to be arraigned at the Criminal Court tested positive for illegal drugs. Community Court Project, *supra* note 13, at 6. A profile of defendants in MTS, MTN, and the 10th Precinct between 1987 and 1991 reveals the following:

- 41.9% have neither a high school degree nor a GED equivalent
- 56.5% are unemployed or have an illegal occupation
- 79.7% have used marijuana, 62.8% have used cocaine, 50.6% have used crack cocaine, 34.3% have used heroin
- 34.3% say they need drug treatment
- 71.9% tested positive by voluntary urinalysis for cocaine

Midtown Community Court Project, Education, Employment, and Substance Abuse Data for Community Court Defendants (n.d.) (compiling data produced by NDRI, Drug Use Forecasting System) (on file with author).

Ironically, the easily-accessed social service treatment available at the Community Court is made available only to criminals and not to the population at large. Many New York City residents have only limited access to treatment. Given the fact that there are only 5500 treatment beds in New York City, one might question the appropriateness of this allocation. Interview with Judge Robert G.M. Keating, *supra* note 5. This allocation of resources becomes troubling when the nexus between the crime and the punishment—such as a “punishment” that grants coveted space in a drug treatment program—is too tenuous. On the other hand, the Community Court does not operate an outreach program, so the question remains: Once individuals enter the system that has these resources available, what is the reason not to treat them?

218. Goldstein, *supra* note 195.

219. Midtown Community Court Project, Chart C: Daily On-Site Services (1992) (on file with author).

220. Memorandum from John Feinblatt to Jerry McElroy, *supra* note 201, at 2.

or the AIDS virus.²²¹

4. *Victim/Offender Reconciliation*

Although the Community Court has not yet implemented the victim/offender reconciliation sanction, a mediation program is being explored.²²² For crimes with identifiable victims, reconciliation sessions may be held between victims and offenders or between community groups and offenders. The goal of such a sanction would be to demonstrate to the offender the concrete consequences of his actions. It would further require the offender to take personal responsibility for his crime. In some instances, it may even be possible to provide restitution of sorts.²²³

Victim/offender reconciliation is less appropriate for unlicensed vendors than for other misdemeanants at the court. Unlike petit larceny cases, unlicensed vending presents no easily identifiable victim. Furthermore, unlicensed vending is unlike other crimes, such as prostitution and drug dealing, in that it is primarily economic in nature. It is difficult to identify direct victims of unlicensed vending. Should reconciliation be fostered with individual residents? storeowners? pedestrians? the city tax department? the Fifth Avenue Association? Given the unique impact of this crime on New York neighborhoods, victim/offender reconciliation is unlikely to be an effective sanction for vending offenders.

Another innovation proposed by the Community Court—community impact panels—might be more appropriate for vendors. These panels would be designed “to communicate to the defendant the cost that crime inflicts on a neighborhood,”²²⁴ and they would give community representatives the opportunity to express the neighborhood’s problems and concerns to the defendants. Community impact panels might be appropriate for victimless crimes, and the defendants that come before such panels may agree to perform community service.

IV. MIXED SUCCESS

The Community Court is an ambitious experiment in neighborhood justice, and the developers of the court have not been afraid to think radically to meet the call for change. A reform of this magnitude will inevitably encounter

221. *Id.* The acupuncture program must be entered voluntarily by defendants. Telephone Interview with John Feinblatt, *supra* note 192.

222. Interview with John Feinblatt, *supra* note 171.

223. Memorandum from John Feinblatt to Jerry McElroy, *supra* note 201, at 2.

224. Community Court Project, *supra* note 13, at 10.

obstacles, and despite the enthusiasm of the court's developers, the court poses several problems. For the moment, some of these problems appear academic, yet they are real and present dangers to the court and its defendants. Most of the problems relate to implementation of the court's unique approach to criminal justice administration for low-level quality-of-life crimes. The court seeks to create a fabric of broad-based community service programs that can accommodate nearly all defendants, thus meeting a need that had previously gone unmet; however, some of the procedures by which the court attempts to reach this goal are troubling.

A. *Community Service Sanctions*

The essence of the Community Court's three-year experiment is its community service sanctions. This aspect of the court should be embraced by both "the right and left of [the] crime control"²²⁵ community. Controversy generally has surrounded the appropriateness of community service as an alternative to traditional sentencing—while the right favors stiffer penalties for offenders, the left advocates reduced reliance on jails and an expansion of the use of substitute punishments.²²⁶ The Community Court, however, functions in a unique environment, and the usual circumstances leading to disagreement between right and left are not present. Community service, in the context of the Community Court, should reconcile these points of view.

Offenders who are sentenced to community service by the Community Court would otherwise routinely be given time served in the Criminal Court. Rather than serving as a substitute for jail, community service sanctions in the Community Court are filling a space where virtually nothing existed before. This is especially true in the case of unlicensed vendors since a significant number of vendors are given DATs at arrest and therefore serve no time at all. Due to the difficulties of administering criminal justice in urban areas, crimes brought to the Community Court—unlicensed vending, prostitution, fare-beating, minor drug offenses, and petit larceny and criminal possession of stolen property—are crimes for which convicted offenders are released after arraignment. For this reason, liberals should be satisfied that this is a fair alternative to overcrowded jails, and conservatives should recognize that community service is better than no sanction at all.

225. Norval Morris, *Foreword to McDONALD, supra note 199*, at xiii.

226. McDONALD, *supra note 199*, at 2.

B. *Balance of Power*

If the parties involved in the Midtown Community Court resist the new system, the changes may become more symbolic than realized. The key issue is whether the preexisting balance of power between prosecutors and judges will be disturbed. Charles Grau's study of the Travis County Courts-at-Law in Austin, Texas, is a good example of judicial sentencing reform that "threaten[ed] to reorganize existing relationships, preferences, and behavior" of critical actors in the criminal justice process.²²⁷ The court's central change was the introduction of Community Service Restitution (CSR) as an alternative to a fine or jail term for misdemeanants. The goal of CSR, like that of the Community Court, was to reintegrate misdemeanants into the community. In the Austin case, prosecutors resisted the reform because it would have changed the balance of power. Before CSR, the judge generally accepted sentencing recommendations by the prosecutor; after the change, the prosecutor was denied that sentencing discretion.²²⁸ Ultimately, "program implementation was stymied" because the change threatened to alter drastically existing working and political relationships between judges and prosecutors, among others.²²⁹

In another study on community service sentencing alternatives, the Vera Institute determined that the allocation of authority for screening and sentencing decisions significantly affected the court's reform initiatives.²³⁰ Where the selection of potential sentences was judge-centered, rather than prosecutor-centered, more offenders were given community service; on the other hand, where the dominant position was held by the district attorneys' offices, "prosecutors used their power to restrict the sentencing of jailbound offenders to community service."²³¹ The Vera Institute made the following findings: (1) the person designated to make the initial decisions regarding eligibility for community service sentencing is important in the ultimate acceptance of community service as a real and important alternative; and (2) where the defense attorney decides which cases a judge should consider for community service, more offenders were actually given such a sentence.²³²

Although the sentencing changes instituted by the Community Court have the potential to disrupt the balance of power between the judge and prosecutor,

227. Charles W. Grau, *The Limits of Planned Change in Courts*, JUST. SYS. J., Spring 1981, at 84, 90.

228. *Id.* at 91.

229. *Id.*

230. This study by the Vera Institute of Justice examined what happened when community service sanctions were introduced into three different New York City courts between 1979 and 1981. MCDONALD, *supra* note 199, at 1.

231. *Id.* at 75.

232. *Id.*

this potential has not been realized. A consideration of Grau's study might predict that the Community Court's changes would effect a shift of sentencing discretion from prosecutor to judge, because, in fact, the prosecutor holds a dominant position in the Community Court.²³³ Because the prosecutor would have no real negotiating power if the defendant were to plead to the top charge, the prosecutor generally makes an offer to a reduced charge, which typically consists of an ACD and a certain number of days of community service.²³⁴ The defendant is free to accept or reject the offer of community service, and he can, of course, plead not guilty. Although the judge receives more information through the expanded interview form, and could potentially take a more active role in the process, in most cases the judge agrees with the prosecutor's offer, which usually includes community service. Thus, sentencing authority is de facto delegated to the prosecutor. In practice, if not in theory, the Community Court has not had a major impact on the balance of power, and community service already has become a routine and predictable part of sanctioning.

Community service sanctions are likely to gain gradual acceptance as an established part of the Community Court's proceedings. First, unlike the reform studied by the Vera Institute, the Community Court has not limited eligibility for community service sentencing. Because the court envisions that nearly all offenders can be accommodated by the spectrum of available community service projects, all Community Court offenders are eligible for community service. Second, in contrast to the findings of the Vera Institute, prosecutors do not appear to have used their power to limit the imposition of community service sentences by the court, notwithstanding their dominance in the Community Court. The reason seems clear: From the prosecutor's perspective, the imposition of some sanction is better than no punishment at all, and many of these defendants would otherwise have been sentenced to time served. Thus, from the outset, both Community Court judges and the District Attorney's Office appear to appreciate the availability and benefits of community service as a meaningful sanction.

C. Due Process Concerns

The Community Court has attempted to "match" the scope of the pre-arraignment assessment questionnaire to its expected uses. The intake form

233. Telephone Interview with John Williams, *supra* note 12.

234. See N.Y. Crim. Proc. Law § 170.55(2) (McKinney 1992). Upon issuing an order of ACD (adjournment and contemplation of dismissal), combined with a sentence of a specific number of days of community service, the court must release the defendant on his own recognizance. The judge adjourns the case for six months. If the defendant completes his community service and commits no other crimes during the six-month period, the case is dismissed and sealed; if the defendant does not comply, the case can be reopened. *Id.*

Hawking Neighborhood Justice

may, however, ask for more information than is really necessary. At a minimum, court officials must insure that the specific purposes of the assessment form are clearly defined and limited and that the information received is used for those stated purposes only.

Although issues involving prearrest assessment forms have not arisen frequently in reported case law, those cases that are reported demonstrate that great care must be taken in releasing the information gathered during the initial intake interview. In New York, the use of information gathered by the Criminal Justice Agency (CJA) in the prearrest stage has generated controversy since some prosecutors have attempted to use it for purposes other than those directly related to release of the defendant. The central question addressed by these cases is this: "Can information obtained directly from a defendant—without *Miranda* warnings and in the absence of counsel—for use on arrest in determining eligibility for recognizance or bail release, be employed against the defendant at trial?"²³⁵ In *People v. Brown*,²³⁶ the prosecution subpoenaed a CJA employee to testify to statements given by the defendant in a prearrest interview that was conducted "for bail or recognizance release" purposes. The information in issue, defendant's marital status and place of residence, was obtained from the defendant without a *Miranda* warning and in absence of counsel. Consequently, the New York Supreme Court held that the information was not admissible for purposes of the prosecution's affirmative case against the defendant. The court ruled, however, that the information would be admissible on cross examination if it were directed to the defendant's credibility.

The holding in *Brown* was at least partially driven by the court's interest in creating and preserving an environment that would allow the CJA interview program to succeed. The *Brown* court declared that a primary goal of the procedure should be "to secure the full and honest cooperation of the interviewees and to provide thereby complete and candid information to the court."²³⁷ In *Brown*, it appeared that defendants were being told that their cooperation during the prearrest interview was "essential to a favorable recommendation" to the judge in connection with their bail or recognizance application and that "their statements [could] be used against them if they violate[d] any release conditions."²³⁸ The New York Supreme Court observed that, given these warnings, defendants undoubtedly were less likely to be willing to answer the questions candidly. Consequently, the court recognized that "[t]he detrimental effect of such a reaction on the defendants themselves and on the entire CJA program is clear, and the heretofore innumerable

235. *People v. Brown*, 438 N.Y.S.2d 955, 955 (Sup. Ct. 1981).

236. *Id.*

237. *Id.* at 957.

238. *Id.*

successes of the ROR plan will be consequently and substantially reduced."²³⁹ Finally, the court concluded that "all statements secured from a defendant during this prearrestment interrogation process should be barred from purely affirmative use by the People on both their direct and rebuttal cases."²⁴⁰

In its holding, the New York Supreme Court in *Brown* specifically noted that the nature of the information sought by CJA went "far beyond the mere pedigree information secured by arresting officers during the 'booking' procedures."²⁴¹ If the prosecution were permitted to use release-on-recognizance (ROR) intake statements against a defendant in its affirmative case, an absence of preliminary warnings would violate a defendant's constitutional rights.²⁴² In short, the use of this information by the district attorney would probably require adequate *Miranda* warnings. Also at work in *Brown* was the notion that a defendant, by verbally attempting to exercise the constitutional right to be free from excessive bail,²⁴³ may be deprived of the right to remain silent.²⁴⁴

The limited findings of the court in *Brown* are generally consistent with the views of the Supreme Court of Minnesota, the only other state that has directly considered this issue. In *State v. Winston*,²⁴⁵ the court held that it was error for the prosecution to call a probation officer to testify regarding information given during an interview, the purpose of which was to arrange bail. Although the particular circumstances of this case did not render this conduct prejudicial,²⁴⁶ the court emphasized that continuing the practice of calling probation officers to testify regarding information given at bail-setting interviews would seriously jeopardize the interview program.²⁴⁷ In sum, the court stated that "such evidence given to the probation officer . . . cannot be used in the prosecution of . . . defendants."²⁴⁸

In combination, these two cases indicate that the Community Court must be careful in releasing information obtained from defendants for release-specific purposes. Because the prearrestment assessment form of the Community Court is created for rather expansive purposes, the court must take steps to avoid potential conflicts. The standard ROR interview form completed at central booking is distributed to the court, prosecution, and defense before arraignment. The new, expanded assessment form used by the Community

239. *Id.*

240. *Id.*

241. *Id.* at 958.

242. *Id.* (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)).

243. U.S. CONST. amend. VIII; N.Y. CONST., art. I, § 5.

244. U.S. CONST. amend. V; N.Y. CONST., art. I, § 6.

245. 219 N.W.2d 617 (Minn. 1974).

246. *Id.* at 620.

247. *Id.*

248. *Id.*

Hawking Neighborhood Justice

Court is also distributed to each of these participants, and the information is used as a guide in sentencing offenders to community and social service as well as in referring individuals to the many services available at the court. The distribution of this form, however, may give rise to questions of how the information gathered can be used against the defendant at trial should a defendant plead not guilty and be sent downtown to the Criminal Court for trial, raising the very issues identified in *Brown*.

The Community Court has instituted what has been described by the court's coordinator as a *Miranda*-type warning given to each defendant at the outset of each intake interview by CJA. This may not be enough, however, because each defendant is interviewed before having the opportunity to meet with an attorney. The court should consider further measures to assure that the information gathered is not used improperly. There are several options to consider in taking steps to avoid the problems raised in *Brown* and *Winston*. First, the District Attorney's Office could enter a standard agreement that the information received through the expanded interview will not be used to compromise the defendant's rights through an abuse of the prearrest assessment form. Second, the defense attorney could be given some degree of control over the distribution of the information gathered during the interview. A third option, and one that might be the least problematic, would be to have two separate interview forms. In other words, it might be possible to maintain the ROR form as it exists downtown and to keep the expanded portion separate in order to avoid later problems. The separation of the form into two parts might only be useful if the district attorney were precluded from gaining access to the expanded form.

D. Funding Concerns and Replication of the Community Court

Not surprisingly, the proliferation of street peddlers on Fifth Avenue has caused outrage among legitimate merchants. These merchants, united in the Fifth Avenue Association, have claimed that the peddlers steal business, evade taxes, create litter and garbage, and destroy the ambiance of the exclusive avenue. The Fifth Avenue Association and its members have vigorously supported the development of the Community Court. The group's interest, however, raises troubling questions about the acceptability of private financial contributions to the public state court system.

The Fifth Avenue Association has a powerful interest in the success of the Community Court. The Association hopes that the court will rid the area of some of its present evils. Because the members of the Fifth Avenue Association represent one of the city's most important economic interests, City officials listen and respond to the merchants' concerns to insure that they do not move from the area. This group in particular has long been antagonistic to

vendors and is responsible for much of the law dealing with unlicensed vending. For example, the Association led the campaign to reverse an April 1990 court ruling in *Kaswan v. Aponte*,²⁴⁹ which exempted disabled veterans from municipal laws prohibiting most street vending in midtown. In effect, *Kaswan* permitted disabled veterans to vend free of the time, place, and manner restrictions in the city. In September 1991, the state legislature, with the strong backing of the Fifth Avenue Association, passed legislation that essentially negated the effect of *Kaswan* in New York City; the legislative amendment to the 1894 law now excludes cities with more than one million residents from the provision exempting disabled veterans.²⁵⁰

The Fifth Avenue Association has not hesitated to join in the latest battle against New York City vendors through the development of the Community Court. Although the peddlers are not the only, or even the largest, problem facing Fifth Avenue, their reduced presence likely will have other positive effects. After the Association's victory following *Kaswan*, merchants hoped that a decrease in the number of vending tables would make it easier for police to see other participants in illegal activity, such as three-card monte dealers and unlicensed watch salesmen.²⁵¹

The Fifth Avenue Association has made a significant financial investment in the Community Court. The fact that strong private interests are making significant financial contributions to the court has caused many criminal justice officials to voice questions about the propriety of such contributions. Many of the people interviewed expressed their concern that the court was the direct result of a rich special interest buying its own system of justice. Recognizing the financial role that the area's businesses have played in the founding of the court, one critic charged that the court's existence could only be explained as the work of "a few powerful people who want their own court," because, in his view, all other factors militate against the court's development.²⁵² The Community Court's coordinator, John Feinblatt, argues that private contributions are necessary to begin any intervention into the present system.²⁵³ He also points out that these private funds were not diverted from another part of the criminal justice system. Nonetheless, the Community Court's private funding raises questions of propriety. Not only must the criminal justice system be fair, it must *appear* to be fair in order not to jeopardize the public's faith and confidence in the system. The appearance of the "privatization" of criminal justice in New York City should be cause for concern.²⁵⁴

249. 553 N.Y.S.2d 407 (Sup. Ct. 1990).

250. Theresa Agovino, *Ruling Restores Fifth Ave. Luster*, CRAIN'S N.Y. BUS., Sept. 16, 1991, at 4.

251. *Id.*

252. Interview with Paul Shechtman, *supra* note 128.

253. Interview with John Feinblatt, *supra* note 171.

254. The Community Court's annual budget is \$1.1 million. Lynette Holloway, *Neighborhood Report: Red Hook; Community Court Planned*, N.Y. TIMES, Dec. 5, 1993, § 13, at 10.

Hawking Neighborhood Justice

The nature of the court's funding has also stirred concern that the judges on the court will feel accountable to the large merchants in the area and consequently will impose harsher sentences than they otherwise would. The preservation of "an independent, fair and competent judiciary" is of the utmost importance to our legal system.²⁵⁵ Canon One of the Model Code of Judicial Conduct dictates that a judge shall uphold the integrity and independence of the judiciary, for "[a]n independent and honorable judiciary is indispensable to justice in our society."²⁵⁶ In fact, the commentary to Canon One notes that the independence of judges turns upon their acting "without fear or favor." Furthermore, the commentary to Canon Two of the Model Code specifically notes that a judge is to avoid not only all impropriety but also any appearance of impropriety. In the past, the Chief Administrative Judge of the New York State Courts, Leo Milonas, resisted special purpose tribunals altogether because he believes that courts need to maintain a sense of impartiality with a "cool" environment and not a "hot" environment plagued by special interests.²⁵⁷

Ultimate success for the Community Court would entail the adoption of its theory and methods in other areas of New York and other cities. If the cost is bearable in other areas, the Community Court may be "a first step in breaking up the city's large, gasping criminal justice system into small, local courts."²⁵⁸ However, the cost of establishing similar courts is not insignificant. In fact, if other communities are unable to bear this cost, one must question the Community Court's "fairness to poor communities that cannot afford to sponsor such an innovation."²⁵⁹ The success of the Community Court would then appear to be attributable to a "rich community buying its own court system."²⁶⁰ Other impediments to the court's replication exist as well. In order to expand this program, the centralized system would have to post judges, clerks, and other court services around the city. Eventually, this would drain the Criminal Court's resources and hamper the system. In fact, participants in the Community Court's development have admitted that "[t]he whole thing is money."²⁶¹

By the end of 1993, the possibility of replicating the Community Court in other areas of New York City began to transform into a reality. A planning committee has been formed to work on the establishment of a community court in the Red Hook area of Brooklyn,²⁶² and the 1994-95 budget plan for court

255. MODEL CODE OF JUDICIAL CONDUCT pmbl. (1990).

256. MODEL CODE OF JUDICIAL CONDUCT Canon 1 (1990).

257. Interview with Judge E. Leo Milonas, Chief Administrative Judge of the New York State Courts, in New York, N.Y. (Dec. 14, 1992).

258. Hoffman, *supra* note 97.

259. Blumenthal, *supra* note 7, at A1.

260. Interview with Nina Epstein, *supra* note 32.

261. *Id.*

262. Telephone Interview with John Feinblatt, *supra* note 10.

operations proposes the creation of this second community court, to be modeled on the Community Court, at the Red Hook housing projects.²⁶³ The court is scheduled to open in the spring of 1994 and will be designed to meet the specific needs of its community.²⁶⁴ In contrast to the Community Court's focus on transient criminals in Times Square, this court will be aimed at "hometown criminals" who are responsible for the "fear, drugs and guns that have long been part of the landscape of [the Red Hook housing projects]."²⁶⁵ This court will also be a three-year experiment. The court will process low-level misdemeanors similar to those processed by the Community Court, but it will also offer additional services, including a civil court, a family court, and a night court for nonjury criminal trials. Arraignments likely will take place from the precincts via video monitors. In addition, a "team of defenders" is expected to be assigned to the court so that they may become more familiar with the neighborhood.

As might be expected, one obstacle impeding the Red Hook court's ability to get off the ground is funding. Officials are still seeking both public and private funds for the court. Thus far, the United States Justice Department has provided a grant of \$150,000 to help organize the court, and organizers have applied for a grant of \$125,000 from the New York City Housing Authority to develop construction plans.²⁶⁶ The Red Hook community's difficulty in finding sufficient funds is not unexpected. Rather, this community's frustration emphasizes the unique position of the Community Court and highlights the privileged nature of its funding. If other neighborhood communities across New York are unable to finance a community court and funding is not available from the city, efforts to replicate the Community Court will not succeed.

E. Equality in Sentencing

The Community Court raises questions of fairness by giving similar defendants committing similar crimes different sentences.²⁶⁷ Though perhaps unintentional, the sentences imposed by judges at the Community Court are harsher than those imposed by judges at 100 Centre Street for like offenses. In essence, the Community Court's sentencing structure creates a problem of horizontal equity. For example, if two people are arrested for peddling goods without licenses a block apart, one within the catchment area of the Community Court and the other outside of it, they will be arraigned in different courts.

263. Gary Spencer, *Court Seeks \$902 Million Budget; Ask for Better Courthouse Security; New Phones, Computers for Judges*, N.Y. L.J., Dec. 3, 1993, at 1.

264. Holloway, *supra* note 254.

265. *Id.*

266. *Id.*

267. Interview with Frank P. Witty III, Staff Attorney, The Legal Aid Society, Criminal Defense Division, in New York, N.Y. (Dec. 17, 1993); see Hoffman, *supra* note 168.

Hawking Neighborhood Justice

The offender arrested outside of the Community Court's catchment area will be sent to 100 Centre Street and will probably receive either a fine or a sentence of time served. In contrast, the offender arrested in the Times Square Area will be arraigned at the Community Court and, upon the entering of a guilty plea, likely will be given a sentence that involves community service and some sort of counseling, depending upon the information that has been gathered through the expanded prearrest assessment form. Thus, the vendor arraigned at the Community Court and sentenced to community service and treatment will be in the state's custody for a longer period of time than the vendor who is required only to pay a fine.

The Community Court has established a "separate but unequal system"²⁶⁸ in which people are treated differently based upon the fortuity of the location of their arrest combined with the intangibles identified during an interview. This kind of blatant disparity in sentencing does not exist in the federal system,²⁶⁹ where, at least in theory, the punishment is designed to fit the crime and not the location of the offense.²⁷⁰ John Feinblatt agrees that the court creates a sentencing disparity. He argues that while Community Court sentences for lesser offenses are harsher, *less* jail time is imposed on more serious offenders, making those sanctions less severe than the ones received downtown. Ultimately, Feinblatt explains that this sentencing framework imposes real, intermediate sanctions.²⁷¹

In part, the greater severity of the sentences at the Community Court arises from the expanded intake forms administered by representatives of CJA and filled out by all defendants appearing in court. This newly revised prearrest assessment form supplies the judge with more information about the individual defendant than would be received were the defendant arraigned downtown at the Criminal Court.²⁷² In this way, the judge is able to make a reasoned choice with respect to community service and treatment alternatives. In tailoring sanctions to the criminals as individuals, however, a degree of unfairness is built into the system. Because the Community Court system asks

268. Interview with Nina Epstein, *supra* note 32.

269. Even in the federal system, local discretion may affect prosecutorial choices despite the existence of the federal sentencing guidelines. Because crime and resources vary across federal districts, there may be occasions on which such discretion is justifiable. *See, e.g.,* William Braniff, *Local Discretion, Prosecutorial Choices and the Sentencing Guidelines*, 5 FED. SENTENCING REP. 309 (1993).

270. Interview with Nina Epstein, *supra* note 32.

271. Some degree of unequal sentencing is already built into the New York criminal justice system. For example, the city has five district attorneys, each with its own policies. Therefore, a peddler in Manhattan may receive different treatment than a peddler in Queens by virtue of geographical divisions. Telephone Interview with John Feinblatt, *supra* note 10.

272. Informal mechanisms in the Community Court may also supply the judge with supplementary information. For example, because only three judges rotate to preside at arraignment, it is highly likely that they will see individual peddlers, as well as other offenders, numerous times. In fact, after less than two months of the court's operation, many defendants had already been arraigned at the Community Court two or three times for the same charges. Hoffman, *supra* note 168. Because street peddlers do not have rap sheets, a judge's memory may be the only indication that an individual peddler is a repeat offender.

how to provide services and sanctions to best help a particular individual, other individuals who have committed the same crime are necessarily treated differently downtown. Although the court has only been open for a short time, defense lawyers are well aware of the inequities posed by the Community Court and its sentencing scheme. What does this mean? It means that vendors and other misdemeanants are being advised to stay downtown.²⁷³

Despite this sentencing problem, some judges believe that additional information will benefit previously ignored defendants by making possible alternative sanctions, such as mandatory drug treatment.²⁷⁴ Viewed in this way, the unfairness of increased severity in sentencing does not become a problem, because it is perceived that defendants are actually being helped.²⁷⁵ But consider another example. If two persons commit petty theft and one is also a drug addict, part of the latter defendant's sanction in the Community Court may involve lengthy drug treatment. Although the defendant's participation in such a program is intended to be in his own interest, the perception is that he is subject to an added burden by being placed under state control for significantly longer than someone who committed the same crime but does not have a dependency problem. Irrespective of the benefits to the defendants as individuals, paternalistic ideas of assistance may not be enough to trump notions of equity.

Moreover, we should consider whether it makes sense to send unlicensed vendors or other defendants to rehabilitation or social services at all. If a vendor or any other misdemeanant has a drug problem, the Community Court judge may sentence the offender to participate in some type of social service or other drug treatment program. In some instances, the virtual lack of nexus between the crime committed and the punishment imposed makes the imposition of such a sanction troubling at best. Furthermore, what action is the court

273. When one unlicensed street vendor who had been arrested multiple times asked where to peddle his rubber spiders and motorized mice, his lawyer advised him to "stay downtown" since he likely would be arrested again. *Id.*

The inequities presented by the Community Court may not be limited to defendants. The Manhattan District Attorney's Office has noticed that prosecutors, too, have a sense of inequity: "They work in a building downtown where defendants and witnesses can't use the bathrooms because they're so filthy, and then they work in a midtown building with acupuncture and hot soup for the defendants." *Id.* (quoting Paul Shechtman, former Counsel to the District Attorney).

274. Interview with Judge Robert G.M. Keating, *supra* note 5. One Community Court judge has observed that part of what she does is "facilitat[e] some social work." Goldstein, *supra* note 195 (quoting Judge Judy Harris Kluger).

275. Interviewees who found the resulting inequities in sentencing acceptable had various reasons, most of them based upon the Community Court's intent to help these defendants. Alternative sanctions may be viewed as a humanitarian approach to meting out justice on these criminal defendants. Interview with Judge Charles Solomon, *supra* note 127. In some ways, mandatory therapy and treatment are not "sanctions" at all; rather, mandatory treatment demonstrates concern for these individuals' well-being. Interview with Gerald Shoenfeld and Herb Sturz, *supra* note 12. One judge went so far as to suggest that "perhaps it should be happening this way at 100 Centre Street, too." Interview with Judge Charles Solomon, *supra* note 127. One interviewee characterized the inequities as a necessary risk of change, explaining only that "the law is often an ass." Interview with William H. Daly, *supra* note 18.

Hawking Neighborhood Justice

to take if the defendant does not complete the mandated treatment? Should the court now send him to jail when it probably was not prepared to send the defendant to jail for the crime in the first place?²⁷⁶

In the Criminal Court system, the available sanctioning alternatives may be analogized to “a leap between a band-aid and brain surgery.”²⁷⁷ If someone misses community service mandated by the Criminal Court, a warrant is put out for his arrest. The developers of the Community Court recognize that an escalating system of sanctions is desirable, and they are attempting to design graduated sanctions so that the consequences do not become too harsh too quickly. One judge explained that “the Community Court is about filling in the numbers two through nine. At one, nothing happens to the defendant. At ten, the defendant spends a short time in jail.”²⁷⁸ To some extent this problem has already been addressed, because community service options are designed to encompass varying degrees of supervision in order to “guard against a jail-bound population.”²⁷⁹

F. Displacement

One measure of the Community Court’s success will be the change, if any, in the number of vendors in the Times Square Area. If the court is successful over time, peddlers will learn that if arrested they will have to perform community service, unlike their counterparts in other areas of the city. As a result, they will not come back to the midtown area. Success, as measured by the number of vendors remaining in the Times Square Area, can mean only one of two things: Either the vendors have been displaced from midtown and have moved into the surrounding areas, or the total number of vendors in the city has decreased. If the former proves true, the success of the Community Court would be illusory. Inevitably, critics would conclude that the Times Square Area merchants and special interests were able “to buy” cleaner, safer streets. Ideally, the Community Court’s presence would wholly eradicate, not merely relocate, the illegal vendors. It is more probable, however, that the court will push the vendors out of its immediate catchment area and into other areas of the city.

276. Telephone Interview with John Feinblatt, *supra* note 10; see *supra* note 210 and accompanying text.

277. Interview with Judge Robert G.M. Keating, *supra* note 5.

278. *Id.*

279. Interview with John Feinblatt, *supra* note 181.

G. Costs

There are many costs associated with the move from a centralized to a decentralized judicial system, and the allocation and control of scarce resources is at the heart of the debate. It is difficult to calculate accurately the costs of reform. First, economies of scale are lost in some contexts, for the Community Court has necessitated the duplication of existing facilities and procedures. For example, in the Criminal Court at 100 Centre Street, just one metal detector and one interpreter serve all those who enter the system. Although the Community Court serves a much smaller population, these facilities had to be duplicated. By one estimation, these two necessities alone will cost in excess of \$1 million per year.²⁸⁰ Not all resources will have to be duplicated, however. Because the Community Court has assumed some of the Criminal Court's caseload, other costs will not increase significantly. For example, part of the section downtown will be closed, and guards and other workers can be relocated to the Community Court.

Some of the Community Court's opponents claim that its "costs are greatly understated."²⁸¹ In addition to the duplication of some resources, there are the basic costs of establishing a new structure, design, and process. These costs might include not only an increase in the criminal justice system's actual budget, but also the opportunity cost of using the building, which belongs to the City. Furthermore, the Criminal Court is a nearly twenty-four hour a day business. In contrast, because the Community Court will be open only during daytime hours, if an offender has to be held overnight because the court is unable to complete processing of all cases in a given day, the staff of the court will have to be paid overtime.²⁸² In comparison, when an offender must be held at the Criminal Court, the incoming shift of court staff takes over at no additional cost. Devising the community service sanctions also increases costs; staff and supervisors must be available to coordinate, manage, schedule, and direct the work of each offender given community service.

An examination of the allocation of resources is central to any assessment

280. Interview with Paul Shechtman, *supra* note 128.

281. *Id.*

282. After eight weeks of the Community Court's operation, the court had reached every case on its docket every day. Interview with John Feinblatt, *supra* note 171. As the court continues to operate, it will begin to expand its caseload (for example, by taking arrests from both the 10th Precinct and the Port Authority) so that the court's ability to complete its docket each day may become a more realistic concern in the future.

It has been noted that even the Criminal Court is susceptible to overload. Thus, it too may have to pay overtime to staff members when it is not able to complete necessary arraignments. In 1989, Matthew Crosson, then-Chief Administrator of State Courts, noted that "[b]ecause of the increased volume of arrests, the [criminal] court has to constantly add extra arraignment parts. . . . These parts frequently are either conducted at night or they go into the night hours, and the result is that we pay overtime to the non-judicial staff." *Survey: Meager Court Facilities are No. 1 Problem; Q & A: OCA Chief Matthew Crosson*, MANHATTAN LAW., Apr. 18-24, 1989, at 37.

Hawking Neighborhood Justice

of the Community Court. Yet, a rigorous accounting of the increased costs is likely to come only at high political cost. In fact, in taking into account the costs of the Community Court, one critic called the project a "bloody waste of money."²⁸³ We must choose to invest our scarce resources in the most cost-efficient system that meets reasonable standards for the administration of justice. By most accounts, the present system does not achieve the latter of these goals. The Criminal Court is able to manage an enormous caseload, yet it does not necessarily do much with the cases that pass through it.²⁸⁴ In the universe of limited resources, quality-of-life crimes are traditionally the last to be addressed. Some judges have expressed their belief that this neglect of low-level offenders may be counterproductive because such offenders may be precisely those whose lives can be changed for the better.²⁸⁵ Most insiders likely would contend that the present system does not help these individuals but rather neglects them until they create bigger and more serious problems for society as felony offenders.²⁸⁶ Such an approach, if true, is "neither humane, nor cost effective."²⁸⁷

A consideration of cost must also question the separateness of the Community Court itself. Why were the changes not implemented in the centralized system downtown? The court's special status and location reduce its cost effectiveness. In fact, Paul Shechtman has noted that some programs exist downtown already. For example, the Parks Department and the Transit Agency both provide work for community service sanctions at the present time. Nonetheless, the developers of the Community Court apparently think it would be too difficult to launch such a broad based experiment within the confines of the present system.

Many of the main players involved in the planning of the Community Court say that the need for space was a key reason for creating the new court in a separate facility.²⁸⁸ In addition, some observers point out that proximity is critical to the success of a community service program and that ideally it should be located in a space contiguous to the courtroom. At 100 Centre Street, the community service office is located on the second floor of the building.²⁸⁹ As one judge observed, "to get them into the program, you've got to get them *to* the program."²⁹⁰ One of the Community Court's primary

283. Interview with Paul Shechtman, *supra* note 128.

284. Even the Criminal Court's "efficiency" has been disputed. See Subin, *supra* note 2.

285. Interview with Judge Robert G.M. Keating, *supra* note 5. At least one observer has suggested a radically different solution to the court's failure. He proposes to divert the majority of the Criminal Court's caseload to noncriminal channels, eliminate the court *in toto*, and focus the criminal justice system on attempting to cope with the most serious crimes. Subin, *supra* note 2, at 2.

286. Interview with Judge Robert G.M. Keating, *supra* note 5.

287. *Id.*

288. Interview with Judge Charles Solomon, *supra* note 127.

289. *Id.*

290. Interview with Judge Robert G.M. Keating, *supra* note 5.

opponents, however, claims that the reason for the creation of a wholly separate facility *cannot* be the lack of space in the facility at 100 Centre Street since there are three rooms that remain unoccupied in the Criminal Court.²⁹¹

Another important factor is the amount of savings in the time that it takes to process a case from arrest to arraignment. In the past, summary arrestees in Times Square were taken downtown for processing and often held overnight for arraignment.²⁹² The Community Court shortens the time from arrest to arraignment, because defendants no longer have to be moved downtown to be processed. This saves the city the expense of transporting and holding summary arrest offenders. Furthermore, the time saved by police officers allows them to return to the streets more quickly.²⁹³ A significant number of vendors, however, are given DATs and are not held until arraignment. In fact, the DAT Express program applies to vendors and is already in place in both the Midtown North and South precincts.²⁹⁴ Therefore, the extent to which the Community Court can shorten the process for unlicensed vending cases will be limited given the time-saving techniques already in place for this group of offenders.

V. CONCLUSION

The Midtown Community Court experiment demonstrates New York's position as a national leader in urban court reform. Despite apparent differences between criminal justice practices in New York and practices in other cities, this experimental project is instructive and relevant for other urban courts. Although there are differences among urban courts, "[t]he structural similarities among all local American criminal courts are so strong that it is accurate to speak of 'the urban criminal court' as a distinct institutional form."²⁹⁵ Innovations in New York City courts in particular deserve close attention, because in the past New York has served as the model for criminal justice

291. Interview with Paul Shechtman, *supra* note 128.

292. *Spotlight on Justice in Times Square*, *supra* note 156.

293. *Id.*

294. Interview with Deirdre Newton, *supra* note 97.

295. McDONALD, *supra* note 199, at 3. While meaningful differences may exist between upper and lower courts, and between rural and city courts, most urban courts employ similar schemes of criminal procedure:

Police make arrests; district attorneys' office charge defendants and prosecute them on behalf of the public and the state; defense attorneys represent defendants. Judges manage the adjudication process, take convictions, and pass sentences. And . . . plea bargaining practices found in New York City courts resemble those found elsewhere. . . . In short, New York's courts are more similar to those elsewhere than they are different.

Id.

Hawking Neighborhood Justice

practices nationwide.²⁹⁶ The Community Court may represent the beginnings of a major shift away from centralized court administration, which has dominated the thinking of court administrators in New York and other cities, toward the localization of lower courts.

Although this Note considers the workings of the Midtown Community Court generally, its conclusions are, in some ways, limited to the context of unlicensed vendors. The Community Court's jurisdiction sweeps across all misdemeanors committed in the Times Square Area, and unlicensed vendors are caught in this net in significant numbers. Vendors, however, are perhaps the defendants least likely to react positively to the Community Court's novel approach. The Community Court's most innovative sanctions, including rehabilitation programs and counseling, do not ameliorate or even address the specific problems that most vendors face.²⁹⁷

A major motivation behind the development of the Community Court is sheer dissatisfaction with the present system,²⁹⁸ for "the New York City Criminal Court is not performing the functions of a criminal court—indeed, it is not performing much of a function at all."²⁹⁹ In the final analysis, the Community Court is a welcome attempt to improve the substance and procedure of criminal justice administration at the Criminal Court. One Criminal Court judge stated that it is "hard to imagine a scenario in which the results [of the Community Court] will be worse" than the results of the Criminal Court.³⁰⁰ The developers of the Community Court have seized an opportunity to meet a call for change. At a minimum, the development of the Community Court focuses attention on much neglected, quality-of-life crimes and their impact on neighborhood communities, and demonstrates that our society does not have to be satisfied with the "turnstile" system of justice that exists in the New York Criminal Court.

296. *Id.* New York court innovations include Desk Appearance Tickets, ROR in lieu of bail, and the pretrial diversion of youthful offenders. *Id.* at 3-4. The public and the national news media have already begun to take an interest in the Community Court. *See, e.g., NBC Nightly News with Tom Brokaw* (NBC television broadcast, Brian Williams, reporter, Dec. 16, 1993).

297. The Community Court has, however, taken steps to meet the needs of unlicensed vendors as a distinct group of offenders. First, the court has hired a Senegalese supervisor to assist in the supervision of vendors in community service projects. Second, the court has instituted English as a Second Language classes that are available to vendors. *See supra* text accompanying note 198. Third, the court expects to institute a jobs program. This program will not only employ people at the courthouse and pay them minimum wage, but it will also provide "job readiness" training with instruction in interview skills and résumé writing. Telephone interview with John Feinblatt, *supra* note 10.

298. For further discussion and another proposal for change, see Subin, *supra* note 2.

299. *Id.* at 2.

300. Interview with Judge Robert G.M. Keating, *supra* note 5.

